# Fair Labor Standards Act (FLSA) Compliance Program


*A comprehensive program designed to help employers ensure compliance with the wage & hour, overtime, and child labor requirements of the federal Fair Labor Standards Act (FLSA)*

personnel concepts

EMPLOYER KNOWLEDGE SERIES

# Fair Labor Standards Act (FLSA) Compliance Program

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# Introduction and Implementation Procedures

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The Fair Labor Standards Act (FLSA), which prescribes standards for the basic minimum wage and overtime pay, affects most private and public employment. It requires employers to pay covered employees who are not otherwise exempt at least the federal minimum wage and overtime pay of one-and-one-half-times the regular rate of pay. For nonagricultural operations, it restricts the hours that children under age 16 can work and forbids the employment of children under age 18 in certain jobs deemed too dangerous. For agricultural operations, it prohibits the employment of children under age 16 during school hours and in certain jobs deemed too dangerous. The Act is administered by the Employment Standards Administration's Wage and Hour Division (WHD) within the U.S. Department of Labor (DOL).

More than 130 million workers in more than 7 million workplaces are protected or "covered" by the FLSA, but according to the DOL, over 70% of employers are not in compliance. Each year, the WHD recovers over $200 million in back wages and overtime pay for employees whose FLSA rights were violated by their employer.

Employers need to be more vigilant than ever, as there has been an effort by the Obama administration to bolster wage and hour enforcement through Secretary of Labor Hilda Solis and some 250 new WHD investigators. A new aggressive campaign from the DOL, entitled "We Can Help", focuses on reaching out to workers who feel they are victim of wage and hour violations. Targeted employers include organizations that are new, small, multi-locations, businesses that have prior violations as well as unsuspecting organizations such as non-profits and charities. The DOL is also aggressively targeting traditionally low wage industries such as hotels/ motels, restaurants, retail and healthcare. Companies found to be in violation of the FLSA are subject to payment of back wages, liquidated damages, civil money penalties, individual liability, injunctions, criminal penalties and attorney's fees.

This manual provides information about the FLSA, important elements in compliance, and required documentation. It also discusses the steps employers must take to implement their own FLSA Compliance Program. A program as outlined herein can only be effective if taken seriously and followed through. Each organization is unique. The needs of your organization should be examined and implemented into the program in order to make it successful. It is essential that the employer demonstrate at all times their personal concern for their employees and the priority placed on them in your workplace. The policy must be clear. The employer shows its importance through their own actions.

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## INTRODUCTION

The Fair Labor Standards Act (hereinafter "FLSA") sets the minimum wage, overtime pay, record keeping and child labor standards for full and part-time employees of private companies as well as employees of federal, state and local governments. The FLSA covers all employees of enterprises conducting business in interstate commerce, producing goods for interstate commerce, or working on goods or materials that have been moved in, or produced for interstate commerce. The FLSA further covers enterprises that (1) have gross annual sales in excess of $500,000.00; (2) are engaged in the care of the sick, aged or mentally ill who reside on premises, or in education; or (3) are a public agency. However, even if a company does not meet the above criteria, it may still be subject the FLSA's minimum wage, overtime pay, record keeping, and child labor provisions.

Exemptions under the FLSA are narrowly defined and applied, and therefore employers need to check the exact terms and conditions for each potentially exempt employee. Certain employees are exempt from both the minimum wage and overtime pay provisions while others are only exempt from the overtime pay provisions. Employees who are exempt from both the minimum wage and overtime pay provisions include, but are not limited to executive, administrative and professional employees, employees of certain seasonal amusement and recreational businesses, newspaper delivery, casual babysitters and/or companions to the elderly or infirm, and farm workers whose employers used no more than 500 man-days of labor in a calendar quarter. Employees who are exempt from only the overtime pay provision include, but are not limited to, commissioned employees working in retail or service fields, employees working for rail, air or motor carriers who are paid by approved trip rate plans, some employees of non-metropolitan broadcasting stations, domestic service workers residing with their employer and farm workers.

The U.S. Department of Labor's Wage and Hour Division (WHD) administers and enforces the provisions of the FLSA through investigators across the country. It is their role to ensure that an employer is in compliance with the FLSA and to enforce its provisions if a violation is found. If a violation is found in the workplace, the investigator may simply recommend changes to the employer's current practices to bring them into compliance, or if it is found that a violation was willful, the employer may be prosecuted criminally and fined up to $10,000. A second conviction could lead to imprisonment. Violations of the child labor provisions are subject to civil penalties of up to $11,000 per employee subject to the violation, and may increase up to $50,000 if a violation results in the serious injury or death of a child, which can be doubled to $100,000 if the violation is found to be willful. Additionally, employers who willfully or repeatedly violate the minimum wage and overtime pay provisions are subject to civil fines up to $1,100 per violation. Therefore, it is imperative that employers comply with the FLSA, and also create and implement best practices that ensure compliance and prevent violations.

## OVERVIEW

This section will provide a general overview of the FLSA including minimum wage, hours worked, overtime pay, breaks and meals, child labor and record keeping, reporting notices and posters. This overview is not a comprehensive discussion of each section listed above, but is designed to give the employer a greater insight into each section to aid in the development of best practices and therefore FLSA compliance.

## MINIMUM WAGE, HOURS WORKED, OVERTIME PAY, AND BREAKS & MEALS

As of July 24, 2009, employees covered by the FLSA, and not exempt as outlined above, are entitled to a minimum wage of $7.25 per hour. Covered employees who work more than 40 hours in a workweek must be paid an overtime pay rate that is not less than one and one-half times their regular pay rate. Wages required by the FLSA are due to the employee on the regularly scheduled payday and cannot include deductions from the employee's wages for cash or merchandise shortages, employer required uniforms, and tools of the trade if they reduce the employee's wages below the minimum wage required by the FLSA.

There are exemptions to the standard minimum wage. First, employees who customarily and regularly receive more than $30 per month in tips may be paid a minimum direct wage from the employer of $2.13 per hour, so long as the employee is notified in advance that this is the case and that the employee's combined direct wage and tips meet or exceed the applicable minimum wage. Second, an employer may pay an employee under the age of 20 a minimum wage of $4.25 during the employee's first 90 consecutive calendar days of employment.

Additionally, the FLSA allows an employer to employ certain other individuals below the statutory minimum wage if they obtain a certificate issued by the Wage and Hour Division to employ such individuals. These individuals include student learners, full-time students in retail or service establishments, agriculture, or institutions of higher education. Also included are employees whose earning and productive capacity are hindered by either a physical or mental disability, age or injury.

Although the FLSA sets a standard for minimum wage, overtime pay and the employment of minors, it does not regulate other practices, including the number of hours in a day or days in a week an employee over the age of 16 may be scheduled to work. Additionally, the FLSA does not require (1) vacation, holiday, severance, or sick pay; (2) meal or rest periods, holidays off, or vacations; (3) premium pay for weekend or holiday work; (4) pay raises or fringe benefits; or (5) a termination notice, reason for termination, or immediate payment of final wages at the time of termination.

## CHILD LABOR

The FLSA regulates the number of hours children under the age of 16 may work, the types of occupations children may be employed to perform, and it protects the educational opportunities of the child. The FLSA handles farming and non-farming jobs differently as it relates to children.

### Non-Farm Work

Children engaged in non-farm work are regulated as follows: youth aged 18 may engage in any job, whether or not hazardous, and for unlimited hours. Minors aged 16 to 17 may engage in any non-hazardous work for unlimited hours. However, children aged 14 to 15 may engage in non-hazardous work so long as they work no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a non-school day or 40 hours in a non-school week. Additionally, the work may not begin before 7:00 a.m. or end after 7:00 p.m., except between June 1 and Labor Day when evening hours are extended to 9:00 p.m. If a child aged 14 to 15 is enrolled in an approved Work Experience and Career Exploration Program, that child can work up to 23 hours per school week and 3 hours on school days and during school hours. Similarly, children enrolled in and approved Work-Study Program can work during school hours.

Although the FLSA sets the minimum age for non-farm employment at 14, there are exceptions. Specifically, the FLSA allows children of any age to deliver newspapers, perform in radio, television, movie or theatrical productions, work for their parents in their solely owned non-farm business so long as it is not hazardous, and to gather evergreens and to make evergreen wreaths.

**Farm Work**

Children engaged in farm work aged 16 and up may engage in any work, whether or not hazardous, and for unlimited hours, but minors aged 14 and 15 may only engage in non-hazardous work outside of school hours. Similarly, minors aged 12 and 13 may engage in non-hazardous work outside of school hours, but only with their parents express written consent or on the same farm as a parent. Minors under the age of 12 may engage in work outside of school hours in non-hazardous work on farms not subject to the minimum wage standards of the FLSA with their parents' express written consent or on farms owned or operated by a parent. Finally, minors of any age may engage in any occupation on a farm owned or owned and operated by a parent.

**RECORDS KEEPING, REPORTING, NOTICES & POSTERS**

Every employer covered by the FLSA must keep and maintain records of each covered non-exempt employee. The records required to be kept are typically already kept by the employer in their day-to-day operations. There is no specific or required form or format in which the company must maintain or keep the records. The records maintained must include accurate and complete data about the employee and about the hours worked and wages earned. Specifically, the employer must maintain records of the following information on each covered employee:

- Employee's full name, address and identifying symbol or number if such is used in place of name on any time, work, or payroll records;
- Birth date, if younger than 19;
- Sex and occupation;
- Time and day of week when employee's workweek begins;
- Hours worked each day and total hours worked each workweek;
- Basis on which employee's wages are paid (per hour, week, or piecework);
- Regular hourly pay rate;
- Total daily or weekly straight-time earnings;
- Total overtime earnings for the workweek;
- All additions to or deductions from the employee's wages;
- Total wages paid each pay period; and
- Date of payment and the pay period covered by the payment.

The employer should maintain payroll records, collective bargaining agreements and sales and purchase records for at least three years. Employers should also maintain and keep records on which wage computations are based, including time cards, piecework tickets, wage rate tables, work schedules, and records of additions to or deductions from wages for at least a period of 2 years.

While the FLSA does not require an employer to report the above information to the U.S. Department of Labor, or to any other governmental entity, it does require that these records be

open for inspection by the Wage and Hour Division. Additionally, the Wage and Hour Division may require the employer to make copies, computations or transcriptions of said records which may be maintained and kept at the place of employment or in a central records office.

All employers who employ workers covered by the FLSA's minimum wage provisions must post and keep posted in a conspicuous place in each of their establishments a notice explaining the FLSA. The employer, however, is not required to post it in any language other than English or in any specific size, but the poster must be able to be easily read by its employees. Although every covered employer must post the general FLSA poster, certain industries must post a poster specifically designed for their industry, including employers of agricultural employees, state and local governments and any employer who employs workers with disabilities under special minimum wage certificates.

## CONCLUSION

Given the relative complexity of the FLSA including who is covered, what exceptions and exemptions apply and the possibility of rather harsh penalties for violations of the Act, it is imperative for employers not only to understand and comply with the FLSA, but also to know where to go with questions, and where to send employees who have questions the employer cannot answer. There are several things that each employer must do in order to assure their compliance with the FLSA. First, employers must post the necessary posters and notices, which can be obtained from the U.S. Department of Labor's Wage and Hour Division. Second, they must maintain and keep records on each employee for a period of three years. Third, employers should contact the Wage and Hour Division's local office whenever they are not sure of the proper course of action in any given situation. It is always best to err on the side of caution.

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Frequently Asked Questions

**Minimum Wage and Work Hours**

**Q: What is the Fair Labor Standards Act?**
**A:** The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than $7.25 per hour effective July 24, 2009. Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after 40 hours of work in a workweek.

**Q**: **What is the minimum wage?**
**A:** The federal minimum wage for covered nonexempt employees is $7.25 per hour effective July 24, 2009. The federal minimum wage provisions are contained in the FLSA. Many states also have minimum wage laws. Where an employee is subject to both the state and federal minimum wage laws, the employee is entitled to the higher of the two minimum wages.

Various minimum wage exceptions apply under specific circumstances to workers with disabilities, full-time students, youths under age 20 in their first 90 consecutive calendar days of employment, tipped employees and student-learners.

**Q: What is the minimum wage for workers who receive tips?**
**A:** An employer of a tipped employee is required to pay only $2.13 an hour in direct wages if that amount plus the tips received equals at least the federal minimum wage, the employee retains all tips and the employee customarily and regularly receives more than $30 a month in tips. If an employee's tips combined with the employer's direct wages of at least $2.13 an hour do not equal the federal minimum hourly wage, the employer must make up the difference.

Some states have minimum wage laws specific to tipped employees. When an employee is subject to both the federal and state wage laws, the employee is entitled to the provisions that provide the greater benefits.

**Q: Are employers allowed to pay employees with disabilities a special wage if they are unable to perform the same work load as a non-disabled employee?**

**A:** Section 14(c) of the FLSA authorizes employers, after receiving a certificate from the Wage and Hour Division, to pay special minimum wages – wages less than the federal minimum wage – to workers who have disabilities for the work being performed. The certificate also allows the payment of wages that are less than the prevailing wage to workers who have disabilities for the work being performed on contracts subject to the McNamara-O'Hara Service Contract Act (SCA) and the Walsh-Healey Public Contracts Act (PCA).

Special minimum wages must be commensurate wage rates – based on the worker's individual productivity, no matter how limited, in proportion to the wage and productivity of experienced workers who do not have disabilities performing essentially the same type, quality, and quantity of work in the geographic area from which the labor force of the community is drawn.

**Q: When are pay raises required?**
**A:** Pay raises are generally a matter of agreement between an employer and employee (or the employee's representative). Pay raises to amounts above the federal minimum wage are not required by the Fair Labor Standards Act (FLSA).

**Q: What if a state's minimum wage law is greater than the federal minimum wage?**
**A:** Where state law requires a higher minimum wage, that higher standard applies.

**Q: How many hours per day or per week can an employee work?**
**A:** The Fair Labor Standards Act (FLSA) does not limit the number of hours per day or per week that employees aged 16 years and older can be required to work.

**Q: When is overtime due?**
**A:** For covered, nonexempt employees, the Fair Labor Standards Act (FLSA) requires overtime pay at a rate of not less than one and one-half times an employee's regular rate of pay after 40 hours of work in a workweek. Some exceptions to the 40-hours-per-week standard apply under special circumstances to police officers and firefighters employed by public agencies and to employees of hospitals and nursing homes.

Some states also have enacted overtime laws. Where an employee is subject to both the state and federal overtime laws, the employee is entitled to overtime according to the higher standard (i.e., the standard that will provide the higher rate of pay).

**Q: When must breaks and meal periods be given?**
**A:** The Fair Labor Standards Act (FLSA) does not require breaks or meal periods to be given to workers. Some states may have requirements for breaks or meal periods. In states that do not require breaks or meal periods, these benefits are a matter of agreement between the employer and the employee (or the employee's representative).

**Q: What is The Patient Protection and Affordable Care Act and how does it apply to the FLSA?**

**A:** The Patient Protection and Affordable Care Act (“PPACA”), signed into law on March 23, 2010 (P.L. 111-148), amended Section 7 of the FLSA, to provide a break time requirement for nursing mothers.

Employers are required to provide a reasonable break time for an employee to express breast milk for her nursing child for one year after the child’s birth each time such employee has the need to express the milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

**Q: How are vacation pay, sick pay, and holiday pay computed and when are they due?**
**A:** The Fair Labor Standards Act (FLSA) does not require payment for time not worked, such as vacations, sick leave or holidays (federal or otherwise). These benefits are a matter of agreement between an employer and an employee (or the employee's representative).

**Q: How many hours is full-time employment? How many hours is part-time employment?**
**A:** The Fair Labor Standards Act (FLSA) does not define full-time employment or part-time employment. This is a matter generally to be determined by the employer. Whether an employee is considered full-time or part-time does not change the application of the FLSA.

**Q: What notices must be given before an employee is terminated or laid off?**
**A:** The Fair Labor Standards Act (FLSA) has no requirements for notice to an employee prior to termination or lay-off. In certain cases, employers must give the workers advanced notice of mass layoffs or plant closure. The Worker Adjustment and Retraining Notification (Warn) Act provides specific information on advance notice, employer responsibility and workers rights during mass layoffs or plant closure.

Some states may have requirements for employee notification prior to termination or lay-off.

**Recordkeeping and Reporting**

**Q: What records are employers required to keep under the FLSA?**
**A:** Every covered employer must keep certain records for each non-exempt worker. The Act requires no particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. The law requires this information to be accurate. The following is a listing of the basic records that an employer must maintain:

1. Employee's full name and social security number.
2. Address, including zip code.
3. Birth date, if younger than 19.
4. Sex and occupation.
5. Time and day of week when employee's workweek begins.
6. Hours worked each day.
7. Total hours worked each workweek.
8. Basis on which employee's wages are paid (e.g., "$9 per hour," "$440 a week," "piecework")
9. Regular hourly pay rate.
10. Total daily or weekly straight-time earnings.
11. Total overtime earnings for the workweek.
12. All additions to or deductions from the employee's wages.
13. Total wages paid each pay period.
14. Date of payment and the pay period covered by the payment.

**Q: How long must the records be retained?**
**A:** Each employer shall preserve for at least three years payroll records, collective bargaining agreements, sales and purchase records. Records on which wage computations are based should be retained for two years, i.e., time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages. These records must be open for inspection by the Division's representatives, who may ask the employer to make extensions, computations, or transcriptions. The records may be kept at the place of employment or in a central records office.

**Q: Is there a required format for timekeeping?**
**A:** Employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employees' work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

**Overtime**

**Q: What is the purpose of the FairPay Overtime regulations?**

**A:** The U.S. Department of Labor revised the white-collar overtime regulations in 2004 to help protect the overtime eligibility of low-wage workers and to ease the compliance burden on employers who found the old regulations difficult to apply. Essentially, the revised rules (called FairPay Overtime Rules) changed the criteria used to determine if an employee must be paid on an hourly (non-exempt) basis or a salary (exempt) basis. The revised regulations represented the first major overhaul of federal overtime standards in 30 years. One major reason for the overhaul is that many employers and employees alike felt that the minimum exempt salary under the old regulations---$155 per week, or $8,060 annually---had become outdated, particularly when considering the increases to the federal minimum wage in 1996-1997 and related state minimum wage increases.

**Q: What were the major changes brought about by the revised regulations?**

**A:** The most significant change to the overtime standards was the increase to the minimum exempt salary from $155 per week to $455 per week. This change guarantees overtime protection and eligibility for all workers who earn less than $455 per week (or $23,660 annually). Additionally, the revised regulations streamlined the white-collar duties tests by defining and/or redefining subjective terms, clarifying terms and principals used in each of the tests, creating a new test for "highly compensated" employees, and providing specific examples of how to apply the duties tests. According to the Department of Labor, all of these changes will strengthen overtime protection for up to 6.7 million workers, including 1.2 million low-wage workers. The regulations also revised specific rules pertaining to deductions from an employee's salary.

**Q: What is an "exempt" employee?**

**A:** Exempt workers are salaried employees who are not paid overtime due to an exception under federal wage and hour laws. Under the FLSA, employers are required to pay certain workers overtime pay at a rate of one and one-half times their regular wage rate for all hours worked over 40 in a given workweek. Section 13(a) of the FLSA states that employees paid on a salary basis (at a salary level meeting the established minimum) who perform duties in an administrative, executive, or professional capacity are exempt from the overtime requirements. Thus, only those workers who meet the duties tests under the overtime standards can be classified as "exempt." These exempt workers typically receive certain fringe benefits associated with their exempt status. For example, exempt employees are paid a flat salary for each week they perform work regardless of the number of hours they work.

**Q: What is a "non-exempt" employee?**

**A:** Non-exempt employees are hourly workers who must be paid overtime premium pay (one and one-half times their regular rate of pay) for all hours worked over 40 in a workweek. Generally speaking, non-exempt workers are those workers whose compensation and/or job duties do not meet the white-collar duties tests used to classify workers as exempt. While non-exempt workers don't enjoy the fringe benefits received by exempt workers, they are guaranteed overtime protection under the FLSA.

**Q: Where can an employer find information on Fair Labor Standards Act (FLSA) exemption for executive, administrative, professional and outside sales employees?**

**A:** Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

**Q: What is a "white-collar worker" and how does the term relate to overtime requirements?**

**A:** A "white-collar worker" is an exempt, salaried employee who performs duties for the employer in an administrative, executive, or professional capacity. The Part 541 regulations under the FLSA include tests, also known as the "white-collar duties tests," that determine if an employee is exempt or non-exempt. The term "white-collar" is used in contrast with the term "blue-collar" to differentiate between non-manual office workers (white-collar workers) and manual / trade laborers (blue-collar workers).

**Q: What are "blue-collar workers" and how does the term relate to overtime requirements?**

**A:** The DOL describes blue-collar workers as non-management production-line employees and non-management employees in maintenance, construction and similar occupations. This may mean that a management production line employee may be classified as an exempt employee. Although the regulation also identifies other groups of employees (such as first responders and law enforcement personnel) who may not be covered by the revised rules, the job title of an employee does not automatically mean that such employee should be treated as a non-exempt, hourly employee. The rule says that it all depends on what the employee's job duties include.

**Q: What is a "highly compensated" employee and how do the overtime rules affect how these employees are paid?**

**A:** Under the revised FairPay rules, "highly compensated" employees are employees who perform office or non-manual work and who earn at least $100,000 per year. The regulations allow employers to classify these highly compensated workers as exempt from overtime pay if they perform at least one exempt duty under any of the various duties tests (the executive, administrative, or professional tests).

**Q: What are the rules pertaining to salary deductions?**

**A:** The regulations allow employers to deduct wages from an employee's salary in one-day increments for disciplinary suspensions. Additionally, the regulations provide a safe harbor for employers to correct improper deductions. Under the old regulations, improperly deducting wages from an exempt employee's salary resulted in the loss of the exemption for all similarly classified employees in the same establishment. (For example, an improper deduction from an exempt administrative employee would cause all administrative employees within the establishment to become non-exempt, and thus be due overtime pay for hours worked over 40 in a workweek). Under the revised rules, if an employer has established a salary deduction policy and a complaint mechanism to report improper deductions, the employer can avoid losing the exemption for an entire class of employees by simply correcting the improper deduction.

**Q: What are the penalties for non-compliance with the overtime regulations?**

**A:** Employers who willfully or repeatedly violate the overtime pay requirements are subject to a civil money penalty of up to $1,000 for each such violation. The enforcing agency, the Wage and Hour Division (WHD) of the U.S. Department of Labor, may supervise the payment of back wages (including lost overtime pay) and may also bring suit for back wages and liquidated damages. In FY 2007, the Department of Labor's enforcement program recovered over $221 million in back wages and lost overtime pay for violations of the FLSA.

**Child Labor**

**Q: What is the youngest age at which a person can be employed?**

**A:** The Fair Labor Standards Act (FLSA) sets 14 as the minimum age for most non-agricultural work. However, at any age, youths may deliver newspapers; perform in radio, television, movie, or theatrical productions; work in businesses owned by their parents (except in mining, manufacturing or hazardous jobs); and perform babysitting or minor chores around a private home. Also, at any age, youth may be employed as homeworkers to gather evergreens and make evergreen wreaths.

Different age requirements apply to the employment of youths in agriculture.

Many states have enacted child labor laws, some of which may have a minimum age for employment which is higher than the FLSA. Where both the FLSA and state child labor laws apply, the higher minimum standard must be obeyed.

**Q: Must young workers be paid the minimum wage?**

**A:** The Fair Labor Standards Act (FLSA) requires payment of at least the federal minimum wage to covered, nonexempt employees. However, a special minimum wage of $4.25 per hour applies to employees under the age of 20 during their first 90 consecutive calendar days of employment with an employer. After 90 days, the Fair Labor Standards Act (FLSA) requires employers to pay the full federal minimum wage.

Other programs that allow for payment of less than the full federal minimum wage apply to workers with disabilities, full-time students, and student-learners employed pursuant to sub-minimum wage certificates. These programs are not limited to the employment of young workers.

**Q: When and how many hours can youth work?**

**A:** Under the Fair Labor Standards Act (FLSA), the minimum age for employment in non-agricultural employment is **14**. Hours worked by 14- and 15-year-olds are limited to:

- Non-school hours;
- 3 hours in a school day;
- 18 hours in a school week;
- 8 hours on a non-school day;
- 40 hours on a non-school week; and
- hours between 7 a.m. and 7 p.m. (except from June 1 through Labor Day, when evening hours are extended to 9 p.m.)

Youths **14 and 15 years old** enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours).

The FLSA does not limit the number of hours or times of day for workers **16 years and older**.

**Q: What kinds of work can youth perform?**

**A:** Regulations governing youth employment in non-agricultural jobs differ somewhat from those pertaining to agricultural employment. In non-agricultural work, the permissible jobs, by age, are as follows:

1. Workers 18 years or older may perform any job, whether hazardous or not;
2. Workers 16 and 17 years old may perform any non-hazardous jobs; and
3. Workers 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs

Fourteen is the minimum age for most non-agricultural work. However, at any age, youths may deliver newspapers; perform in radio, television, movie, or theatrical productions; work in businesses owned by their parents (except in mining, manufacturing or on hazardous jobs); perform babysitting or perform minor chores around a private home. Also, at any age, youths may be employed as homeworkers to gather evergreens and make evergreen wreaths.

Different age requirements apply to the employment of youths in agriculture.

**Q: Must a youth have a work permit to work?**

**A:** The FLSA does not require that youths get work permits or working papers to get a job. Some states do require work permits prior to getting a job. School counselors may be able to advise if a work permit is needed before getting a job.

Implementation Procedures

The following implementation procedures are intended to provide specific instructions for correctly utilizing the various components of our Fair Labor Standards Act Compliance Program. If you have additional questions about this manual or other system components, please contact Personnel Concepts at 800-333-3795.

1. Post the All-On-One FLSA Compliance Poster (Item #FD-FLSA) in a conspicuous location in an area frequented by employees. If you already have this poster displayed due to a previous purchase, proceed to step 2.

2. Review "Fair Labor Standards Act Overview" and "Frequently Asked Questions" in Section 1 of this manual to gain a better understanding of pay practices as they relate to your business.

3. Review Section 2 of this manual ("Wages and Hours Worked") and pay close attention to what qualifies as compensable time under the FLSA. Using the information in this Section, confirm that employees are being paid in compliance the FLSA and that accurate records are being maintained for each employee for a period of at least 3 years.

4. Review "Overtime Pay" in Section 3 for helpful tips on calculating overtime and understanding exemptions. Audit your workplace on exempt/non-exempt status classification by utilizing the "Job Duties Analysis Form" and "Exempt Duties Checklist" in the "Documentation" Section of this manual. Electronic fill-in-the-blank versions of these forms are available on the FLSA Compliance Resource CD-ROM that was included with this manual.

5. If you employ minors (under the age of 18) or if you do business with a contractor who employs minors, review Section 4 ("Child Labor") for information as to the hours minors are permitted to work and duties that they can perform under the FLSA.

6. Review Section 4 ("Breaks, Meals and Special Employment") for an overview of what breaks/meals employees are entitled to under the FLSA and employer obligations under the Patient Protection and Affordable Care Act (PPACA) as it pertains to break time for nursing mothers. If you employ individuals with disabilities, pay particular attention to the information addressing required certification and calculating the appropriate commensurate wage. Utilize the Employee Disability Verification Form and the Wage Determination Worksheet contained on the enclosed FLSA Compliance Resource CD-ROM.

7. Utilize the sample policies in Sections 2, 3, and 4 of this manual to implement wage and hour policies addressing Hours Worked, Overtime, Child Labor, and Breaks and Meal Times. Customizable versions of these sample policies are available on the FLSA Compliance Resource CD-ROM.

8. Reference the documentation forms in Section 6 to assist with compliance with recordkeeping requirements under the FLSA.

9. Refer to the "State Wage and Hour Laws" in Section 7 for applicable laws specific to your state and what is required for compliance.

10. Utilize the “Additional Resources” in Section 8 for more information on where to obtain required postings and certifications, how to contact a help line for assistance, PowerPoint presentations to assist with FLSA training, as well as other important information regarding employer compliance.

11. Consult this manual for guidance whenever a wage & hour or child labor issue arises in your workplace. (In some cases, you may need to refer to the corresponding regulation to determine the appropriate action steps. Your FLSA Compliance Resource CD-ROM includes regulatory text addressing each of the topics covered in this manual.)

# Wages & Hours Worked

Overview

The Fair Labor Standards Act (FLSA) requires that all covered, nonexempt employees be paid at least the minimum wage for all hours worked. The FLSA also provides that covered, nonexempt employees who work more than 40 hours in the workweek must receive at least one and one-half times their regular rate of pay for the overtime hours (hours worked over 40 in a workweek). A workweek, which can begin on any day of the week, is seven consecutive 24-hour periods or 168 consecutive hours.

The Fair Labor Standards Act's (FLSA) basic requirements are:

- Payment of the minimum wage;
- Overtime pay for time worked over 40 hours in a workweek;
- Restrictions on the employment of children; and
- Recordkeeping.

Various minimum wage exceptions apply under specific circumstances to:

**Workers with disabilities** - Individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, may be paid sub-minimum wages pursuant to a certificate issued by the Secretary of Labor. The sub-minimum wages are commensurate with wages paid to workers without disabilities. Employment at less than the minimum wage is authorized to prevent curtailment of opportunities for employment for workers with disabilities.

**Full-time students** - This program is for full-time students employed in retail or service stores, agriculture, or colleges and universities. The employer who hires students can obtain a certificate from the Department of Labor that allows the student to be paid not less than 85% of the minimum wage. The certificate also limits the hours that the student may work to 8 hours in a day and no more than 20 hours a week when school is in session and 40 hours when school is out, and requires the employer to follow all child labor laws. Once students graduate or leave school for good, they must be paid at least the federal minimum wage.

**Youth under age 20 in their first 90 days of employment** - A minimum wage of not less than $4.25 may be paid to employees under the age of 20 for their first 90 consecutive calendar days of employment with any employer so long as their work does not displace other workers. After 90 consecutive days of employment, or when the worker reaches age 20 (whichever comes first), the worker must receive at least the federal minimum wage.

**Student-learners** - This program is for high school students at least 16 years old who are enrolled in vocational education (shop courses). The employer who hires the student can obtain a certificate from the Department of Labor which allows the student to be paid not less than 75% of the minimum wage, for as long as the student is enrolled in the vocational education program.

**Tipped employees** - An employer of a tipped employee is only required to pay $2.13 an hour in direct wages if that amount plus the tips received equals at least the federal minimum wage, the

employee retains all tips and the employee customarily and regularly receives more than $30 a month in tips. If an employee's tips combined with the employer's direct wages of at least $2.13 an hour do not equal the federal minimum hourly wage, the employer must make up the difference. (See Fact Sheet # 15 under the “Pertinent DOL/WD Fact Sheet” section of this chapter)

Some states have minimum wage laws specific to tipped employees. When an employee is subject to both the federal and state wage laws, the employee is entitled to the provision that provides the greater benefits. (See *Minimum Hourly Wages for Tipped Employees by State* under State Wage & Hour Laws)

Special rules apply to state and local government employment involving fire protection and law enforcement activities, volunteer services, and compensatory time off (instead of cash overtime pay). (See Fact Sheet # 7 & 8 under the “Pertinent DOL/WD Fact Sheet” section of this chapter) Employers are required to keep records on wages, hours, and other items which are generally maintained as an ordinary business practice.

The FLSA also includes child labor provisions that are designed to protect the educational opportunities of youth and prohibit their employment in jobs and under conditions detrimental to their health or safety. The child labor provisions include some restrictions on hours of work for youth under 16 years of age and lists of hazardous occupations too dangerous for young workers to perform. (See Chapter 4 of this manual for additional information on child labor rules.)

Wages required by the FLSA are due on the regular payday for the pay period covered. Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal if they reduce the wages of employees below the minimum wage or reduce the amount of overtime pay due under the FLSA.

In order for the FLSA to apply, there must be an employment relationship between an "employer" and an "employee." The FLSA also contains some exemptions from these basic rules. Some apply to specific types of businesses and others to specific kinds of work. (See Fact Sheet #13 under the “Pertinent DOL/WD Fact Sheet” section of this chapter)

**Exemptions**

Some employees are exempt from the overtime pay provisions, some from both the minimum wage and overtime pay provisions and some from the child labor provisions of the FLSA. Exemptions are narrowly construed against the employer asserting them. Consequently, employers and employees should always closely check the exact terms and conditions of an exemption in light of the employee's actual duties before assuming that the exemption might apply to the employee. The ultimate burden of supporting the actual application of an exemption rests on the employer.

Exemptions are typically applied on an individual workweek basis. Employees performing exempt and non-exempt duties in the same workweek are normally not exempt in that workweek.

The following is a list of some of the more commonly used exemptions. This list is not intended to be all-inclusive. Other, less commonly used FLSA exemptions are listed after this section.

***Commonly Used Exemptions***

- **Commissioned sales employees** of retail or service establishments are exempt from overtime if more than half of the employee's earnings come from commissions *and* the employee averages at least one and one-half times the minimum wage for each hour worked. (See Fact Sheet #20 under the "Pertinent DOL/WD Fact Sheet" section of this chapter)
- **Computer professionals**: Section 13(a)(17) of the FLSA provides that certain computer professionals paid at least $27.63 per hour are exempt from the overtime provisions of the FLSA. (See Fact Sheet #17E under the "Pertinent DOL/WD Fact Sheet" section of this chapter)
- **Drivers, driver's helpers, loaders and mechanics** are exempt from the overtime pay provisions of the FLSA if employed by a motor carrier, and if the employee's duties affect the safety of operation of the vehicles in transportation of passengers or property in interstate or foreign commerce. (See Fact Sheet #19 under the "Pertinent DOL/WD Fact Sheet" section of this chapter)
- **Farmworkers** employed on small farms are exempt from both the minimum wage and overtime pay provisions of the FLSA. Young workers employed on small farms, with parental consent, are also exempt from the child labor provisions of the FLSA. Other farmworkers are exempt from the FLSA's overtime provisions. (See Fact Sheet #12 under the "Pertinent DOL/WD Fact Sheet" section of this chapter)
- **Salesmen, partsmen and mechanics** employed by automobile dealerships are exempt from the overtime pay provisions of the FLSA. (See Fact Sheet #11 under the "Pertinent DOL/WD Fact Sheet" section of this chapter)
- **Seasonal and recreational establishments**: Employees employed by certain seasonal and recreational establishments are exempt from both the minimum wage and overtime pay provisions of the FLSA. (See Fact Sheet #18 under the "Pertinent DOL/WD Fact Sheet" section of this chapter)
- **Executive, administrative, professional and outside sales employees** as defined in Department of Labor regulations and who are paid on a salary basis are exempt from both the minimum wage and overtime provisions of the FLSA.

**Other FLSA exemptions include the following:**

(MW = minimum wage OT = overtime CL = child labor)

- Aircraft salespeople - OT
- Airline employees - OT
- Amusement/recreational employees in national parks/forests/Wildlife Refuge System - OT
- Babysitters on a casual basis - MW & OT
- Boat salespeople - OT
- Buyers of agricultural products - OT
- Companions for the elderly - MW & OT
- Country elevator workers (rural) - OT

- Workers with disabilities - MW
- Domestic employees who live-in - OT
- Farm implement salespeople - OT
- Federal criminal investigators - MW & OT
- Firefighters working in small (less than 5 firefighters) public fire departments - OT
- Fishing - MW & OT
- Forestry employees of small (less than 9 employees) firms - OT
- Fruit & vegetable transportation employees - OT
- Homeworkers making wreaths - MW, OT & CL
- Houseparents in non-profit educational institutions- OT
- Livestock auction workers - OT
- Local delivery drivers and driver's helpers - OT
- Lumber operations employees of small (less than 9 employees) firms - OT
- Motion picture theater employees - OT
- Newspaper delivery - MW, OT & CL
- Newspaper employees of limited circulation newspapers - MW & OT
- Police officers working in small (less than 5 officers) public police departments - OT
- Radio station employees in small markets - OT
- Railroad employees - OT
- Seamen on American vessels - OT
- Seamen on other than American vessels - MW & OT
- Sugar processing employees - OT
- Switchboard operators - MW & OT
- Taxicab drivers - OT
- Television station employees in small markets - OT
- Truck and trailer salespeople - OT
- Youth employed as actors or performers - CL
- Youth employed by their parents – CL

**Practices Not Regulated by FLSA**

There are a number of employment practices that the FLSA does not regulate. For example, **the FLSA does not require**:

(1) vacation, holiday, severance, or sick pay;
(2) meal or rest periods, holidays off, or vacations;
(3) premium pay for weekend or holiday work;
(4) pay raises or fringe benefits;
(5) a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees; and
(6) pay stubs or "W-2"s.

The FLSA does not provide wage payment or collection procedures for an employee's usual or promised wages or for commissions in excess of those required by the FLSA. Also, the FLSA does not limit the number of hours in a day, or days in a week, an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old. However, some states do have laws covering some of these issues, such as meal or rest periods, or discharge notices.

The above matters, which are not covered by the FLSA, are generally for agreement between the employer and the employees or their authorized representatives.

**Hours Worked**

The amount of pay that employees should receive cannot be determined without knowing the number of hours worked. The following is an overview of what constitutes compensable time under the FLSA:

***Physical Exams, Fingerprinting and Drug Testing***

After being hired, employers often require their employees to take certain tests as they begin employment or on a periodic basis during their employment, such as physical examinations, fingerprinting and drug testing. Whenever employers impose special tests, requirements or conditions that the employee must meet, the time he or she spends traveling to and from the tests, waiting for and undergoing these tests, or meeting the requirements is probably hours worked.

It does not matter whether these tests are scheduled during the employee's normal working hours or during his or her non-working hours. Time spent in these activities is time during which the employee's freedom of movement is restricted for the purpose of serving the business and during which he or she is subject to the employer's discretion and control.

***Preliminary and Postliminary Activities***

Time spent in activities that are preliminary (before an employee begins his or her principal work activities) and postliminary (after an employee ends his or her principal work activities) may or may not be hours worked.

Time an employee spends in the following activities would **not** be hours worked even though it might be time spent on the employer's premises or another assigned place of duty.

- Walking, riding, or traveling to and from the actual place where the employee performs the principal activities that he or she is employed to perform would not be hours worked. This is the case whether the employee is on or off the premises or before or after he or she has checked in or out.

For example, if an employee travels to a parking area and completes his or her trip to the work site in a company bus, the time spent traveling to the parking area and riding on the bus to the job site is not hours worked.

- Activities which occur either prior to or after the time an employee ends his or her principal activities on any workday would not be hours worked.

For example, showering at the beginning or end of each workday for the employees own benefit and convenience and not directly related to the employee's principal activities would be considered preliminary or postliminary activity and would not be hours worked.

***Exceptions Based on Contract, Custom or Practice***

There are two exceptions to these principles. The employer would have to consider this time as hours worked if:

1. the time is considered hours worked according to an express provision of a written or unwritten contract between the employer and the employee or the employee's representative (e.g., union), or
2. the time is treated as hours worked according to custom or practice at the place where the work is performed.

The time spent in these preliminary and postliminary activities comprise hours worked only to the extent provided for by contract, custom or practice.

For example, if the contract, custom or practice considered the time spent for the trip to the work site as hours worked but not the return trip, the travel time spent on the return trip would not be hours worked.

Only the amount of time allowed by the contract, custom or practice provision must be considered hours worked.

For example, if the time allowed for showering at the beginning and end of the workday is 15 minutes but the activity takes 25 minutes, the time to be treated as hours worked would be limited to 15 minutes.

***Principal Activities***

The activities that an employee is employed to perform are his or her principal activities. These activities include any work of consequence performed for the business -- no matter where the work is performed. An employee's principal activities also include all activities which are an integral (or essential) part of his or her principal activities.

For example:

- When operating a lathe an employee will frequently, at the beginning of his or her workday, oil, grease or clean his or her machine, or install a new cutting tool. Such activities are an integral part of the principal activity. Time spent in these activities would probably be hours worked.

- The time spent by a butcher sharpening knives and other tools is a part of the principal activity the butcher was hired to perform and would probably be hours worked.

Among the activities included as an essential part of a principal activity are those closely related activities that are necessary for the performance of the principal activity.

For example:

- If an employee in a chemical plant cannot perform his or her principal activities without putting on certain clothes, changing clothes on the employer's premises at the beginning and end of the workday would be a necessary part of the employee's principal activities. The time spent in changing clothes would be hours worked

- Some employees, such as nurses and machine operators, who replace employees already on duty, are required to report to work before the beginning time of their shift. This time is frequently referred to as "reporting time." The extra reporting time is for the purpose of being made aware of what is going on or receiving instructions to continue work already in progress**.** This time is probably hours worked.

Note: there are special rules concerning early relief or reporting time for certain public sector employees.

***Suffer or Permit to Work***

The FLSA defines the term "employ" to include the words "suffer or permit to work." Suffer or permit to work means that if an employer requires or allows employees to work, the time spent is generally hours worked.

Thus, time spent doing work not requested by the employer, but still allowed, is generally hours worked, since the employer knows or has reason to believe that the employees are continuing to work and the employer is benefiting from the work being done. This time is commonly referred to as "working off the clock." For example, an employee may need to finish an assigned task, prepare reports, finish waiting on a customer or take care of a patient in an emergency. An employee may also take work home to complete in the evening or on weekends to meet a deadline.

***Rework***

When an employee must correct mistakes in his or her work, the time must be treated as hours worked. The correction of errors, or "rework," is hours worked, even when the employee voluntarily does the rework.

***Lectures, Meetings and Training Programs***

Many employers give employees opportunities to go to lectures and seminars and to attend training programs. Employers may also require employees to attend company meetings. Time spent by employees attending lectures, meetings, training programs and similar activities may or may not be hours worked depending on the facts of the situation.

The following are some special situations where time spent attending lectures, training sessions or courses of instruction is **not** regarded as hours worked.

1. The employer may establish for the benefit of their employees a program of instruction similar to courses offered by independent *bona fide* institutions of learning. Voluntary attendance by employees at such training courses, outside of their working hours,

would not be hours worked, even if the courses directly relate to the employees' jobs or are paid for by the employer.
2. If the employee voluntarily decides to attend an independent school, college or trade school after work hours, the time is not hours worked even if the courses are related to his or her current position or the employer pays for the courses.
3. Time spent in certain supplemental classroom instruction held in conjunction with apprenticeship programs.
4. Special rules apply to public sector employees who attend outside of regular working hours specialized or follow-up training, which is required by law for certification of public sector employees.
5. Police officers and fire fighters attending a police or fire academy or other training facility are not considered to be on duty during those times when they are not in class or at a training session, if they are free to use the time for personal pursuits. Such free time is not hours worked.

In situations other than those listed above, it is necessary to determine whether the time spent attending lectures, training sessions or courses of instruction is hours worked. The first factor to consider is whether the attendance is during the employee's regular working hours.

If the lecture, meeting, training or similar activity takes place during an employee's regular scheduled hours of work, the time is probably hours worked.

Another factor to consider is whether an employee's attendance at the lecture, meeting, training or other similar activity is voluntary

The employee’s attendance is not voluntary if:

1. the employer requires it;
2. the employee understands or is led to believe that not attending will adversely affect his or her present working conditions;
3. not attending will adversely affect the employee's continued employment; or
4. disciplinary action will be taken against the employee for not attending.

If the employee is required to be in attendance at the lecture, meeting, training or other similar activity, the time is probably hours worked.

The third factor to consider is whether the course, lecture, or meeting is directly related to the employee's job. It is directly related to his or her job if it is designed to make the employee do his or her job more effectively or to teach him or her something he or she needs to know to do his or her job. For example, a clerical employee who is given a course in word processing is engaged in training to improve his or her ability to do his or her job.

On the other hand, the training would not be directly related to your employee's job if it is designed to train him or her for another job. For example, if the data entry employee takes a course in bookkeeping, it may not be directly related to his or her job.

Some training courses are instituted for the purpose of preparing an employee for advancement through upgrading the employee to a higher skill and are not intended to make the employee more efficient in his or her present position. This training is not directly related to the employee's job, even though the course incidentally improves his or her skill in doing his or her regular work duties.

**If the lecture, meeting or training program is directly related to the employee's job, the time spent is probably hours worked.**

The final factor to consider is whether the employee performs any productive work while at the lecture, meeting, training program or similar activity. Productive work would be any work which the employer is able to use for their business purposes, rather than work which is for practice only and of no use to the employer. **If the employee performs productive work during attendance, the time is probably hours worked.**

**Since your employee does not perform any productive work during attendance, time spent in the lecture, meeting, or training program is probably not hours worked.**

Attendance at lectures, meetings, training programs and similar activities need not be counted as hours worked if the following four criteria are met:

1. Attendance is outside of the employee's regular working hours;
2. The employee's attendance is, in fact, voluntary;
3. The course, lecture, or meeting is not directly related to the employee's job; and
4. The employee does not perform any productive work during such attendance.

***Waiting for Work***

The time during which an employee is required to be at work or allowed to work for his or her employer is hours worked. A person hired to do nothing or to do nothing but wait for something to do or something to happen is still working. The Supreme Court has stated that employees subject to the FLSA must be paid for all the time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer of his business."

For example:

- A receptionist who reads a book while waiting for customers or telephone calls.
- A messenger who works a crossword puzzle while awaiting assignments.
- A fireman who plays checkers while waiting for alarms.
- A factory worker who talks to fellow employees while waiting for machinery to be repaired.
- A waitperson in a restaurant waiting for customers to arrive.

The rule is the same for employees who work away from the plant.

For example:

- The time spent by a repairperson who has to wait for his or her employer's customer to get the premises ready probably is hours worked.

- The time spent by a truck driver who has to wait at or near the job site for goods to be loaded or unloaded is probably hours worked.

- The time spent by a bus driver who reaches his or her destination and while awaiting the return trip stays with the bus to guard the bus and any items left on the bus is probably hours worked.

In each of these situations, the employee is engaged to wait and the time is hours worked. Waiting is an essential part of the job.

The waiting time is hours worked even though an employee is allowed to leave the premises or the job site during such periods of inactivity. The period during which the inactivity occurs is unpredictable and usually of short duration. In either event, the employee is unable to use the time effectively for his or her own purposes. The employee's time belongs to and is controlled by the employer.

***Off-Duty Waiting Time***

Off-duty waiting time or layover time is a period during which the employee is waiting to be engaged and is not hours worked.

Off-duty waiting time or layover time is **not** hours worked if:

1. the employee is completely relieved from duty;
2. the periods are long enough to enable the employee to use the time effectively for his or her own purposes;
3. the employee is definitely told in advance that he or she may leave the job; and
4. the employee is advised of the time that he or she is required to return to work.

All of the above requirements must be met or the employee is working while waiting. Whether the time is long enough to enable the employee to use the time effectively for his or her own purpose depends upon all of the facts and circumstances of the case.

For example, a truck driver is sent from Washington, D.C., to New York City, leaving at 6:00 a.m. and arriving at 12:00 noon. If the driver is completely and specifically relieved from all duty until 6:00 p.m. when he or she again goes on duty for the return trip, he or she is waiting to be engaged and the time is not hours worked.

***On-Call Time***

An employee who is required to remain on his or her employer's premises or so close thereto that he or she cannot use the time effectively for his or her own purposes is working while on-call.

Whether hours spent on-call is hours worked is a question of fact to be decided on a case-by-case basis. All on-call time is not hours worked.

On-call situations vary. Some employees are required to remain on the employer's premises or at a location controlled by the employer. One example is a hospital employee who must stay at the hospital in an on-call room. While on-call, the employee is able to sleep, eat, watch television, read a book, etc. but is not allowed to leave the hospital. Other employees are able to leave their employer's premises, but are required to stay within so many minutes or so many miles of the facility and be accessible by telephone or by pager. An example of this type of employee is an apartment maintenance worker who has to carry a pager while on call and must remain within a specified number of miles of the apartment complex.

An employee who is not required to remain on his or her employer's premises but is merely required to leave word where he or she may be reached is not working while on-call. In that case, the employer must determine if the employee is able to use the on-call time effectively to engage in personal activities.

Although the employer may require the employee to be accessible by telephone or paging device, or may be subject to rules governing use of alcohol or participation in other activities while the employee is on-call, he or she may still be able to use the on-call time to engage in personal activities, such as cutting the grass, going to the movies, going to a ball game, or engaging in other activities of his or her choosing.

The other consideration in determining whether an employee can use the on-call time for his or her own purpose is the frequency of the work calls received during his or her on-call time. If an employee is interrupted to such an extent that he or she cannot conduct his or her regular activities, the employee probably cannot use the on-call time for his or her own purposes. For example, if he or she is unable to finish a meal, read a story to his or her child or read a newspaper during the same on-call period, he or she probably cannot use the time effectively for his or her own purposes.

In any case, when an employee is on-call, all time spent responding to calls is hours worked.

***Show-up Time***

Sometimes when the employee arrives at work, at the time their employer directed him or her to be there, the employer sends the employee home before any work is performed. The FLSA does not require the employer to consider any of the time as hours worked or to give the employee show-up pay.

For example, an employee of a roofing company arrives for work at 8:00 a.m., as he or she was told to do. The employer tells him or her that they will not be working that day because it is too cold. The employee is sent home. Since the employee did not perform any work, the FLSA would not require the employer to consider any of the time as hours worked or to give the employee show-up pay.

However, some employers and employees have informal or contractual agreements (Collective Bargaining Agreements) that require that a set number of hours be considered hours worked. Some States also have such a requirement.

***Place of Work***

Hours worked include all the time during which an employee is required or allowed to perform work for an employer, regardless of where the work is done, whether on the employer's premises, at a designated work place, at home or at some other location.

It is the duty of management to exercise control and see that work is not performed if the employer does not want it to be performed. An employer cannot sit back and accept the benefits of an employee's work without considering the time spent to be hours worked. Merely making a rule against such work is not enough. The employer has the power to enforce the rule and must make every effort to do so. Employees generally may not volunteer to perform work without the employer having to count the time as hours worked.

***Sleep Time***

Time spent sleeping is considered hours worked in some circumstances.

**All of the time spent on duty, except *bona fide* meal periods, is probably hours worked.**

If an employee is required to be on duty for fewer than 24 hours, all of the duty time is probably hours worked, even though he or she is permitted to sleep or engage in other personal activities when not busy. The fact that sleeping facilities are furnished does not make a difference when an employee's time is given to the Company and the employer required the employee to be on duty.

For example:

- A college student is employed to work in a nursing home from 6 p.m. to 8 a.m. He or she must help the clients to bed and help them get up in the morning. Between the hours of 9 p.m. and 6 a.m. the employee is allowed to study, watch television, sleep, etc. but must be available to handle emergencies or help the clients when they need to get up during the night**. All of the time is hours worked**.

- A truck driver begins a trip in Atlanta, GA, at 7:00 a.m. He or she transports goods to Nashville, TN (approximately 5 hours travel time). The driver arrives at the destination in Nashville, but due to an equipment malfunction, the customer is unable to accept delivery until three hours later. The truck driver chooses to sleep in the sleeping berth while the equipment is being repaired. After delivering the goods, he or she returns to Atlanta, GA, arriving at approximately 9:00 a.m. **All of the time is hours worked (except *bona fide* meal periods) even though some of that time is spent in the sleeping berth.**

When an employee is required to be on duty for 24 hours or more, the employer and employee may agree to exclude *bona fide* meal periods and a *bona fide* regularly scheduled sleeping period of not more than 8 hours from hours worked.

***Employees Residing on the Employer's Premises on a Permanent Basis, For Extended Periods of Time or Working at Home***

Some employees work at home or live on their employer's premises on a permanent basis or for extended periods of time. Examples include an apartment complex maintenance person who lives in the apartment complex, a house parent in a group home or a college student employed as a "resident assistant" who lives in the dormitory. If this describes an employee's employment situation, all of the time spent at their home or at the employer's premises is not hours worked. Ordinarily, an employee has time to engage in normal private activities such as sleeping, eating, entertaining, and other periods of complete freedom from all duties when he or she are able to leave the premises and use the time as he or she chooses.

It is difficult to determine the exact hours worked under these circumstances and any reasonable agreement between the employer and employee that takes into consideration all of the applicable facts will be accepted. In this regard, an employer may wish to review waiting time, meal periods and sleep time. The agreement must indicate the number of hours the employee will work and the hours he or she may use for personal activities.

The reasonable agreement must be an employee-employer agreement and not a unilateral decision by the employer. Such an agreement should normally be in writing in order to avoid any possible misunderstanding of the terms and conditions of the employee's employment. It must account for the time spent working and the time when the employee may engage in normal private activities, with sufficient time for eating, sleeping, entertaining and other periods of complete freedom.

The reasonable agreement should consider all relevant factors including any restrictions or limitations on the use of an employee's personal time and the expected interruptions to eating and sleeping periods. Whether an employee is really free to use personal time as he or she wishes will depend on what actually happens, regardless of the provisions of the written agreement.

The following is an example of a reasonable agreement: a resident assistant in the university dormitory has an agreement with the university to be available for the dormitory residents 5 hours each day (from 10:00 a.m. to 1:00 p.m. and from 7:00 p.m. to 9:00 p.m.) Monday through Friday and to respond to any emergencies in the dormitory. The resident assistant may use the rest of his or her time for attending classes, studying, going to sporting events or concerts, etc., as he or she chooses. The university considers as hours worked the 5 hours per day (Monday through Friday) that the resident assistant is available to residents and any time spent responding to emergencies in the dormitory.

An exact record of hours worked is not required if the employee is living on the employer's premises or working at home. The employer may keep a time record showing the schedule

adopted in the agreement and indicate that the employee's work time generally was the same as the agreement or schedule.

If the employer and employee find that there is a great difference between the hours an employee agreed to work and the hours needed to do the job, a new agreement must be reached that reflects the actual hours the employee is required to work. **All of the time an employee spends working is hours worked.**

***Full-Time and Part-Time Relief Employees of Community Living Centers and Other Similar Facilities***

Some employees, particularly those employed in community living centers, group homes, and halfway houses for the physically or developmentally disabled, reside on their employer's premises on less than a permanent basis. For the following sleep time policies to apply, the community living center or other similar facility must have one or more full-time employees who either reside on the premises permanently or for extended periods of time.

If an employee is a **full-time** employee who resides on their employer's premises for an extended period of time, the employer may deduct up to 8 hours of sleep time per 24-hour period under the following conditions:

1. The employer and employee have an agreement prior to the performance of the work that permits the deduction from hours worked of up to 8 hours of sleep time, *bona fide* meal periods, and/or scheduled free time when the employee is completely relieved from duty.
2. The employee resides on their employer's premises for an extended period of time, which is defined as:
    - residing on the premises at least 120 hours per week, or
    - 5 consecutive days or nights.
3. The employee sleeps on their premises for all sleep periods between the beginning and end of the 120 hour period or during the 5 consecutive days or nights.
4. The employee must be compensated for at least 8 hours in each of the 5 consecutive 24-hour periods.
5. The employer provides the employee with private quarters in a home-like environment.
    - Private quarters means living quarters that are furnished, separate from the clients and from other staff members and have at a minimum the same furnishings available to clients (e.g., bed, table, lamp, chair, dresser, closet, etc.) in which the employee is able to leave his or her belongings during on- and off-duty periods.
    - Home-like environment means facilities including private quarters and including on the same premises facilities for cooking and eating; for bathing in private; and for recreation. The amenities and quarters must be suitable for long-term residence by individuals rather than those found in institutional facilities such as dormitories.

If an employee is a part-time **relief** employee, the employer may also deduct a maximum of 8 hours of sleep time from each 24-hour period under the following conditions:

1. The employer and employee have an agreement prior to the performance of the work that permits the deduction from hours worked of up to 8 hours of sleep time, *bona fide* meal periods, and/or scheduled free time when the employee is completely relieved from duty.
2. The relief employee is substituting for a full-time employee. In other words, he or she works in the place of a full-time employee to provide that full-time employee with a respite from his or her duty.
3. The employee resides on their employer's premises for 1 to 3 nights.
4. The employee must sleep on their employer's premises during each night of the relief period.
5. The relief employee and the full-time employee he or she is relieving may not be on duty at the same time for more than 1 hour per day.
6. The employer must compensate their relief employee for at least 8 hours in each 24-hour period on duty.
7. The employer furnishes the relief employee with private quarters in a homelike environment (as defined above).

To deduct sleep time from either the **full-time** or **part-time** employee, the employee must be able to get at least 5 hours of uninterrupted sleep per night and must be paid for all interruptions to his or her sleep.

***Fire Protection and Law Enforcement Employees***

There are additional special sleep time rules that apply to public sector employees who are employed in fire protection and law enforcement activities.

Section 7(k) of the FLSA provides a partial overtime pay exception for fire protection and law enforcement employees who are employed by public agencies on a work period basis. If an employee's employment is subject to section 7(k) of the FLSA, the employer may not deduct sleep time from the employee's hours of work for a tour of duty that is exactly 24 hours. This is a departure from the rule for other employees who work a 24-hour shift.

***Daylight Savings Time***

Most states participate in daylight savings time. Those employees working the graveyard shift when Daylight Savings Time begins work one hour less because the clocks are set ahead one hour. Those employees working the graveyard shift when Daylight Savings Time ends work an extra hour because the clocks are set back one hour at 2:00 a.m.

For example:

The scheduled shift starts at 11:00 p.m. and ends at 7:30 a.m. the next day, an employee works an eight- hour shift and receives a 30-minute lunch break.

- On the Sunday that Daylight Savings Time starts at 2:00 a.m., the employee does not work the hour from 2:00 a.m. to 3:00 a.m. because at 2:00 a.m. all of the clocks are

turned forward to 3:00 a.m. Thus, on this day the employee only worked 7 hours, even though the schedule was for 8 hours.

- On the Sunday that Daylight Savings Time ends at 2:00 a.m., the employee works the hour from 1:00 a.m. to 2:00 a.m. twice because at 2:00 a.m. all of the clocks are turned back to 1:00 a.m. Thus, on this day the employee worked 9 hours, even though the schedule only reflected 8 hours.

The FLSA requires that employees must be credited with all of the hours actually worked. Therefore, if the employee is in a work situation similar to that described in the above example, he or she worked 7 hours on the day that Daylight Savings Time begins and 9 hours on the day that Daylight Savings Time ends. This assumes, of course, that the employee actually worked the scheduled shift as in our example.

***Travel Time***

The principles that apply in determining whether or not time spent traveling is hours worked depend upon the kind of travel involved. This section is designed to help make this determination.

***Home-To-Work and Return (Commuting)***

When an employee travels from home before his or her regular workday and returns home at the end of the workday, he or she is engaged in ordinary home-to-work travel. This is true whether he or she works at a fixed location or at different job sites.

**Ordinary home-to-work and return travel time is probably not hours worked.**

However, if an employer requires an employee to perform some work-related duties while traveling between his or her home and the work site, the time may be hours worked. Some examples of such work-related duties that may be hours worked include:

- Providing transportation for other employees to or from the work site;
- Picking up supplies or equipment from local suppliers while traveling to or from the work site;
- Stopping at the place of business (e.g. home office) to pick up supplies, tools, to receive instructions or do other work there before traveling to or from the work site.

**The time an employee spends performing work-related duties and traveling to the job site is probably hours worked, regardless of whose vehicle he or she is using.**

When traveling to the work site, all of the time spent traveling from the beginning of the employee's first work-related duty to the work site would be hours worked. For example, if it normally takes the employee 30 minutes to travel to the work site, but he or she is required to make a work-related stop, which is 10 minutes from his or her home, all of the time from that stop until he or she arrives at the work site is hours worked.

The same would be true of the travel from the work site to home. All of the time from the work site to the point where the employee finishes his or her last work-related duty would be hours worked. For example, if an employer directs their employee to provide transportation home for other workers, the time he or she spends taking the employees from the work site to their homes is hours worked. The time the employee spends going to his or her own home from that of the last passenger would not be hours worked, but would be ordinary home-to-work travel.

Note: There are special rules that come into play when the employer provides the employee with a vehicle in which they commute to and from work. Contact the WHD of the DOL for more information.

### *Home-To-Work and Return, Emergency Situation*

There may be instances when travel from home to work is hours worked. For example, if the employee has gone home after completing his or her day's work and is subsequently called to travel a substantial distance to perform an emergency job at one of a customers' work sites; all time spent on such travel is hours worked.

As an enforcement policy, the Wage and Hour Division will take no position on whether travel time is hours worked when an employee is called back to his or her regular place of work in an emergency, outside his or her regular hours of work.

### *Home-To-Work and Return, Special One-Day Assignment*

Different rules apply when an employee regularly works at a fixed location in one city and is given a special one-day assignment in another city.

For example, an employee who works in Washington, D.C., with regular working hours from 9 a.m. to 5 p.m., is given a special assignment in New York City. He or she is instructed to leave Washington, D. C. at 8 a.m. He or she arrives in New York City at 12 noon, ready for work. The special assignment is completed at 3 p.m., and the employee arrives back in Washington, D.C. at 7 p.m.

Such travel cannot be regarded as ordinary home-to-work travel. It was performed for the employers benefit and at their special request to meet the special needs of the company and the assignment. This type of travel would qualify as a necessary part of the principal activity, which the employee was hired to perform on this particular workday.

However, all the time involved, need not be considered as hours worked. The travel between the employee's home and the airport or other public transportation terminal is normal home-to-work travel and is not hours worked. The balance of the time between 8 a.m. and 7 p.m. is hours worked, with the exception of meal periods.

### *Travel That Is All In a Day's Work*

The time an employee spends traveling as part of his or her principal activity, including performing job-related work prior to getting to the work site and traveling between job sites during the workday, is hours worked. This would be the case whether the employee travels as

part of his or her principal activity on a regular basis or only infrequently. The time spent in this type of travel is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice.

For example:

1. Construction workers are often required to report at a designated meeting place where they are given instructions, pick up tools or supplies, or perform other work prior to traveling to the work site. The travel from the designated meeting place to the work site is part of the day's work, and must be counted as hours worked.
2. Time spent traveling from customer to customer by a plumber who makes house calls to do repairs is hours worked.
3. A computer technician who finished his or her work on the premises at 5 p.m. is then sent to a client's site to perform technical support on the client's system. The computer technician finishes at the client's site at 8 p.m., and then returns to his or her employer's premises arriving at 9 p.m. All of the time (from 5 p.m. to 9 p.m.) is hours worked.

However, if the technician went home instead of returning to the employer's premises, the travel time after 8 p.m. is not hours worked. The time after 8:00 p.m. is normal home-to-work and return travel.

***Travel Away From Home Community Involving an Overnight Stay***

Travel that keeps an employee away from home overnight is travel away from the home community. Travel away from home is clearly hours worked when it takes place during an employee's regularly scheduled hours of work. He or she is simply substituting travel for other duties.

If an employee is regularly scheduled to work 8 a.m. to 5 p.m., Monday through Friday, travel time on a train, bus, airplane or in an automobile during these hours is hours worked on Saturday and Sunday, as well as on the other days.

If an employee is a passenger and some part of his or her travel occurs outside of regular working hours, **the travel time outside of your employee's regular hours** is probably **not** hours worked.

If the employee is driving while traveling (as opposed to being a passenger on an airplane, in an automobile, bus or train, etc.), the travel time outside of the employee's regular hours of work could be considered hours worked, depending on the circumstances. However, as an enforcement policy, the Wage and Hour Division will not consider as hours worked that time spent in travel away from home outside of the employee's regularly scheduled hours of work as a passenger on an airplane, train, boat bus or automobile.

### *Work Performed While Traveling*

Any work that an employee is required to perform while traveling must be counted as hours worked. This would include activities such as driving, mandatory reading, clerical work, acting as a tour guide, etc.

Employees who drive a truck, bus, automobile, boat or airplane, or employees who are required to ride therein as an assistant or helper, are working while riding, except during meal periods or during sleep periods.

If an employee is offered public transportation but requests permission to drive his or her own automobile instead, the employer may count as hours worked either:

- the time spent driving the automobile, or
- the time you would have to count as hour worked if your employee had used the public transportation.

Recent Cases and Settlements

The following cases exemplify circumstances in which the DOL took action against employers who violated regulations pertaining to computing hours worked:

**US Labor Department seeks more than $829,000 in back wages, proposes debarment of two contractors for work on New York publicly-funded housing projects**

The U.S. Department of Labor took legal action to recover more than $829,000 in back wages for 32 workers employed as demolition laborers by Enviro & Demo Masters Inc. and Gladiators Contracting Corp., construction demolition companies based in Brooklyn and Queens.

"The department will not hesitate to pursue legal action, including debarment, to ensure employees are properly paid under the law," said Secretary of Labor Hilda L. Solis.

An investigation by the Labor Department's Wage and Hour Division District Office in New York City revealed that the companies and their officials had violated wage and benefit requirements of the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act on two New York City public housing construction projects that were partially funded by the American Recovery and Reinvestment Act (ARRA) of 2009. The investigation found that the companies had failed to pay prevailing wage rates and fringe benefits to some employees, failed to pay employees time and one-half their basic rate of pay for hours worked over 40 in a week, and submitted inaccurate certified payroll and time records.

In filing an order of reference with the department's Office of Administrative Law Judges, the Labor Department is seeking not only full restitution of all back wages due to the employees but also the debarment of Enviro & Demo Masters Inc., Gladiators Contracting Corp., the owner and president of both companies, Jover Naranjo, and Luperio Naranjo from working on future federally-funded contracts for a period of up to three years.

The Davis-Bacon Act requires all contractors and subcontractors performing work on federal and certain federally-funded projects to pay their laborers and mechanics the proper prevailing wage rates and fringe benefits as determined by the Secretary of Labor. In addition, the Contract Work Hours and Safety Standards Act requires contractors and subcontractors to pay laborers and mechanics one and one-half times their basic rate of pay for all hours worked over 40 in a week.

**US Labor Department's Wage and Hour Division assesses Georgia agricultural employer $1.3 million in back wages and $136,500 in penalties**

Following an investigation, the U.S. Department of Labor's Wage and Hour Division (WHD) is assessing J&R Baker Farms LLC $1,311,644 in back wages owed to 244 workers and $136,500 in fines for violating provisions of the H-2A temporary agricultural worker program.

"Low-wage workers in every industry, including agriculture, deserve no less than to receive all the wages they have earned," said Secretary of Labor Hilda L. Solis. "The Labor Department is

committed to protecting the rights of all workers, including those under the H-2A temporary employment program who are working in our country."

Agricultural employers who bring temporary, non-immigrant workers into the U.S. to perform agricultural labor or services of a temporary or seasonal nature must meet requirements of the Immigration and Nationality Act with respect to pay, hours of work and other conditions of employment. Both temporary, non-immigrant farm workers and U.S. workers doing corresponding work are protected under Section 218 of the act.

The Wage and Hour Division found that the vegetable farm allegedly failed to provide at least 75 percent of the hours promised in the work contract. The solicitor is asking that an administrative law judge order the farm to pay $1,311,644 in back wages to 148 U.S. workers and 96 H-2A workers plus pay a fine of $122,000.

The investigation also discovered that the farm failed to provide a copy of the H-2A work contract at the time of recruitment to 29 U.S. workers who performed the same type of work as the H-2A workers. The Labor Department is recommending a fine of $14,500 for that offense.

The Wage and Hour Division enforces worker protection laws that include the Fair Labor Standards Act, the Migrant and Seasonal Worker Protection Act, the Occupational Safety and Health Act's field sanitation and temporary labor camp provisions, and protections for guest workers with H-2A visas provided by the Immigration and Naturalization Act.

**US Department of Labor recovers more than $485,000 in back wages for employees of New York City dollar store chain**

The U.S. Department of Labor recovered more than $485,000 in minimum wages, overtime pay, liquidated damages and post-judgment interest for approximately 120 employees of several New York City-area dollar stores. The dollar stores and their owners agreed to two partial consent judgments resolving the department's lawsuit over alleged violations of the federal Fair Labor Standards Act, including the failure to pay minimum wages and overtime compensation to employees who worked in excess of 40 hours a week.

"We took this legal action because, in the past, these defendants have professed to operate single establishments even though they are actually operating a large, multi-establishment retail enterprise with many locations," said Maria Rosado, director of the Wage and Hour Division's district office in New York City. "The defendants have been failing to properly pay employees even after investigations of individual establishments put them on notice of the law's requirements."

The department filed the suit following an investigation by the Wage and Hour Division which found that employees working at the companies' retail stores often were paid at hourly rates less than the federal minimum wage, and were required to work more than 40 hours in many weeks without being properly compensated. The investigation also found that the companies failed to maintain adequate and accurate records of their employees, wages, hours and other conditions of employment.

The FLSA requires that covered employees be paid at least the federal minimum wage of $7.25 per hour, as well as one and one-half times their regular hourly rates of pay for every hour they work beyond 40 per week. The law also requires employers to maintain accurate records of employees' wages, hours and other conditions of employment, and prohibits employers from retaliating against employees who exercise their rights under the law.

The consent judgments, entered by the court, permanently prohibit the defendants from future violations of the FLSA's minimum wage, overtime pay, recordkeeping and anti-retaliation requirements. The judgments order the defendants to pay the total of $485,607 owed in back wages and damages in accordance with a payment schedule. If any of the defendants fail to make any of the payments on time, the court can appoint a receiver with the power to seize and liquidate their assets to satisfy the order. The defendants also are ordered to install timekeeping systems in their stores and train employees in their use, and to inform their employees of their rights under the law.

**US Department of Labor recovers more than $433,000 in back wages for Walt Disney World employees**

The U.S. Department of Labor's Wage and Hour Division recovered $433,819 in back wages owed to 69 employees of Walt Disney Parks and Resorts U.S. in Orlando, Fla. The company agreed to make the payments following an investigation that uncovered violations of the Fair Labor Standards Act.

A Wage and Hour Division investigator found that inventory control clerks in the park's Food and Beverage Department were not paid for work activities occurring before and after their normal shifts. In addition, they were not paid for working through their meal times and when working from home.

"While Walt Disney has specific rules regarding off-clock work, an investigation conducted by the Department of Labor's Wage and Hour Division found that managers within the company were not adhering to those important policies," said Wage and Hour Deputy Administrator Nancy Leppink. "It is not enough to have policies. Management must also ensure that all supervisors are implementing them."

The FLSA requires that covered employees be paid time and one-half their regular rates of pay, including commissions, bonuses and incentive pay, for hours worked over 40 per week. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work, from the beginning of the first principal activity of the workday to the end of the last principal work activity of the workday. Additionally, the law requires that accurate records of employees' wages, hours and other conditions of employment be maintained. The current federal minimum wage for covered, nonexempt employees is $7.25 per hour.

**US Labor Department investigation nets more than $1.3 million in back wages for 187 employees of GeoPharma in Largo, Fla.**

***Company missed 14 payroll periods, violated FLSA***

Following an investigation by the U.S. Department of Labor's Wage and Hour Division, GeoPharma Inc. agreed to pay $1,360,098 in back wages to 187 employees for violations of the Fair Labor Standards Act.

"Employees have the right to expect that they will receive full pay on time for their work, and the Labor Department will not sit by while employers attempt to evade their responsibilities," said Secretary of Labor Hilda L. Solis.

The investigation, conducted by the Wage and Hour Division's district office in Tampa, determined that the company missed or was in arrears for 14 payroll periods from late 2009 through 2010. The FLSA requires that covered employers pay employees at least equal to the federal minimum wage for each hour worked, and wages are due on the regular payday for the pay period. In this case, the investigation revealed that the employer broke both provisions of the law at different times by not paying some wages at all and by not paying employees on time.

Pertinent DOL/WHD Fact Sheets

**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2009)

## Fact Sheet #13: Employment Relationship Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the meaning of "employment relationship" and the significance of that determination in applying provisions of the FLSA.

**Characteristics**

An employment relationship under the FLSA must be distinguished from a strictly contractual one. Such a relationship must exist for any provision of the FLSA to apply to any person engaged in work which may otherwise be subject to the Act. In the application of the FLSA an employee, as distinguished from a person who is engaged in a business of his or her own, is one who, as a matter of economic reality, follows the usual path of an employee and is dependent on the business which he or she serves. The employer-employee relationship under the FLSA is tested by "economic reality" rather than "technical concepts." It is not determined by the common law standards relating to master and servant.

The U.S. Supreme Court has on a number of occasions indicated that there is no single rule or test for determining whether an individual is an independent contractor or an employee for purposes of the FLSA. The Court has held that it is the total activity or situation which controls. Among the factors which the Court has considered significant are:

1) The extent to which the services rendered are an integral part of the principal's business.

2) The permanency of the relationship.

3) The amount of the alleged contractor's investment in facilities and equipment.

4) The nature and degree of control by the principal.

5) The alleged contractor's opportunities for profit and loss.

6) The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.

7) The degree of independent business organization and operation.

There are certain factors which are immaterial in determining whether there is an employment relationship. Such facts as the place where work is performed, the absence of a formal employment agreement, or whether an alleged independent contractor is licensed by State/local government are not considered to have a bearing on determinations as to whether there is an employment relationship. Additionally, the Supreme Court has held that the time or mode of pay does not control the determination of employee status.

**Requirements**

When it has been determined that an employer-employee relationship does exist, and the employee is engaged in work that is subject to the Act, it is required that the employee be paid at least the Federal minimum wage of $7.25 per hour effective July 24, 2009, and in most cases overtime at time and one-half his/her regular rate of pay for all hours worked in excess of 40 per week. The Act also has youth employment provisions

which regulate the employment of minors under the age of eighteen, as well as recordkeeping requirements.

**Typical Problems**

(1) One of the most common problems is in the construction industry where contractors hire so-called independent contractors, who in reality should be considered employees because they do not meet the tests for independence, as stated above. (2) Franchise arrangements can pose problems in this area as well. Depending on the level of control the franchisor has over the franchisee, employees of the latter may be considered to be employed by the franchisor. (3) A situation involving a person volunteering his or her services for another may also result in an employment relationship. For example, a person who is an employee cannot "volunteer" his/her services to the employer to perform the same type service performed as an employee. Of course, individuals may volunteer or donate their services to religious, public service, and non-profit organizations, without contemplation of pay, and not be considered employees of such organization. (4) Trainees or students may also be employees, depending on the circumstances of their activities for the employer. (5) People who perform work at their own home are often improperly considered as independent contractors. The Act covers such homeworkers as employees and they are entitled to all benefits of the law.

**Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**U.S. Department of Labor**
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

**1-866-4-USWAGE**
TTY: 1-866-487-9243
**Contact Us**

**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2009)

# Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning coverage under the FLSA.

The FLSA is the Federal law which sets minimum wage, overtime, recordkeeping, and youth employment standards.

The minimum wage for covered nonexempt workers is not less than $7.25 per hour effective July 24, 2009. With only some exceptions, overtime ("time and one-half") must be paid for work over forty hours a week. Child labor regulations prohibit persons younger than eighteen years old from working in certain jobs and additionally sets rules concerning the hours and times employees under sixteen years of age may work.

More than 130 million American workers are protected (or "covered") by the FLSA, which is enforced by the Wage and Hour Division of the U.S. Department of Labor.

There are two ways in which an employee can be covered by the law: "enterprise coverage" and "individual coverage."

**Enterprise Coverage**

Employees who work for certain businesses or organizations (or "enterprises") are covered by the FLSA. These enterprises, which must have at least two employees, are:

(1) those that have an annual dollar volume of sales or business done of at least $500,000

(2) hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies

**Individual Coverage**

Even when there is no enterprise coverage, employees are protected by the FLSA if their work regularly involves them in commerce between States ("interstate commerce"). The FLSA covers individual workers who are "engaged in commerce or in the production of goods for commerce."

Examples of employees who are involved in interstate commerce include those who: produce goods (such as a worker assembling components in a factory or a secretary typing letters in an office) that will be sent out of state, regularly make telephone calls to persons located in other States, handle records of interstate transactions, travel to other States on their jobs, and do janitorial work in buildings where goods are produced for shipment outside the State.

Also, domestic service workers (such as housekeepers, full-time babysitters, and cooks) are normally covered by the law.

**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2009)

# Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to employees who receive tips.

**Characteristics**

Tipped employees are those who customarily and regularly receive more than $30 a month in tips. Tips actually received by tipped employees may be counted as wages for purposes of the FLSA, but the employer must pay not less than $2.13 an hour in direct wages.

**Requirements**

If an employer elects to use the tip credit provision the employer must:

1) Inform each tipped employee about the tip credit allowance (including amount to be credited) before the credit is utilized.

2) Be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined.

3) Allow the tipped employee to retain all tips, whether or not the employer elects to take a tip credit for tips received, except to the extent the employee participates in a valid tip pooling arrangement.

If an employee's tips combined with the employer's direct wages of at least $2.13 an hour do not equal the minimum hourly wage of $7.25 per hour effective July 24, 2009; the employer must make up the difference.

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less that $4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Dual Jobs: When an employee is employed concurrently in both a tipped and a non-tipped occupation, the tip credit is available only for the hours spent in the tipped occupation. The Act permits an employer to take the tip credit for time spent in duties related to the tipped occupation, even though such duties are not by themselves directed toward producing tips, provided such duties are incidental to the regular duties and are generally assigned to such occupations. Where tipped employees are routinely assigned to maintenance, or where tipped employees spend a substantial amount of time (in excess of 20 percent) performing general preparation work or maintenance, no tip credit may be taken for the time spent in such duties.

Retention of Tips: The law forbids any arrangement between the employer and the tipped employee whereby any part of the tip received becomes the property of the employer. A tip is the sole property of the tipped employee. Where an employer does not strictly observe the tip credit provisions of the Act, no tip credit may be

claimed and the employees are entitled to receive the full cash minimum wage, in addition to retaining tips they may\should have received.

Service Charges: A compulsory charge for service, for example, 15 percent of the bill, is not a tip. Such charges are part of the employer's gross receipts. Where service charges are imposed and the employee receives no tips, the employer must pay the entire minimum wage and overtime required by the Act.

Tip Pooling: The requirement that an employee must retain all tips does not preclude a valid tip pooling or sharing arrangement among employees who customarily and regularly receive tips, such as waiters, waitresses, bellhops, counter personnel (who serve customers), busboys/girls and service bartenders. Tipped employees may not be required to share their tips with employees who have not customarily and regularly participated in tip pooling arrangements, such as dishwashers, cooks, chefs, and janitors. Only those tips that are in excess of tips used for the tip credit may be taken for a pool. Tipped employees cannot be required to contribute a greater percentage of their tips than is customary and reasonable.

Credit Cards: Where tips are charged on a credit card and the employer must pay the credit card company a percentage on each sale, then the employer may pay the employee the tip, less that percentage. This charge on the tip may not reduce the employee's wage below the required minimum wage. The amount due the employee must be paid no later than the regular pay day and may not be held while the employer is awaiting reimbursement from the credit card company.

**Typical Problems**

Minimum Wage Problems: Employee does not qualify as a "tipped employee", tips are not sufficient to make up difference between employer's direct wage obligation and the minimum wage; employee receives tips only -- so the full minimum wage is owed; illegal deductions for walk-outs, breakages and cash register shortages; and invalid tip pools.

Overtime Problems: Failure to pay overtime on the full minimum wage; failure to pay overtime on the regular rate including all service charges, commissions, bonuses and other remuneration.

**Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet #20: Employees Paid Commissions By Retail Establishments Who Are Exempt Under Section 7(i) From Overtime Under The FLSA

This fact sheet provides general information concerning the application of the Section 7(i) overtime exemption from the FLSA to employees of retail and service establishments, who are paid on a commission basis in whole or part.

**Characteristics**

Retail and service establishments are defined as establishments 75% of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

**Requirements**

If a retail or service employer elects to use the Section 7(i) overtime exemption for commissioned employees, three conditions must be met:

1. the employee must be employed by a retail or service establishment, and
2. the employee's regular rate of pay must exceed one and one-half times the applicable minimum wage for every hour worked in a workweek in which overtime hours are worked, and
3. more than half the employee's total earnings in a representative period must consist of commissions.

Unless all three conditions are met, the Section 7(i) exemption is not applicable, and overtime premium pay must be paid for all hours worked over 40 in a workweek at time and one-half the regular rate of pay.

The representative period for determining if enough commissions have been paid may be as short as one month, but must not be greater than one year. The employer must select a representative period in order to determine if this condition has been met.

If the employee is paid entirely by commissions, or draws and commissions, or if commissions are always greater than salary or hourly amounts paid, the-greater-than-50%-commissions condition will have been met. If the employee is not paid in this manner, the employer must separately total the employee's commissions and other compensation paid during the representative period. The total commissions paid must exceed the total of other compensation paid for this condition to be met.

To determine if an employer has met the "more than one and one-half times the applicable minimum wage" condition, the employer may divide the employee's total earnings attributed to the pay period by the employee's total hours worked during such pay period. If the result is greater than time and one-half the minimum wage, this condition of the exemption has been met.

Hotels, motels and restaurants may levy mandatory service charges on customers which represent a percentage of amounts charged customers for services. If part or all of the service charges are paid to service employees, that payment may be considered commission and, if other conditions in section 7(i) are met, the service employees may be exempt from the payment of overtime premium pay.

**Typical Problems**

Regulations require that employers maintain accurate records of hours worked each workday, hours worked each workweek, and earnings and wages paid. Without hours worked and earnings records, the employer will be unable to substantiate that all conditions for the exemption have been met. In addition, the employer must select a representative period of at least one month, but not more than one year, which typifies the characteristics of the employee's earning pattern, in order to test whether the employee is paid principally by commissions.

Tips paid to service employees by customers may never be considered commissions for the purposes of this exemption.

An employee is employed by the central office of a retail chain enterprise as a sales instructor working in the various retail establishments. Since this employee is employed by the central office and not "by" the retail "establishment", the exemption does not apply.

**Where to Obtain Additional Information**

**For additional information, visit our Wage-Hour website: http://www.wagehour.dol.gov and/or call our Wage-Hour toll-free information and helpline, available 8am to 5pm in your time zone, 1-866-4USWAGE (1-866-487-9243).**

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Wage and Hour Division

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(Revised July 2008)

# Fact Sheet #21: Recordkeeping Requirements under the Fair Labor Standards Act (FLSA)

This fact sheet provides a summary of the FLSA's recordkeeping regulations, 29 CFR Part 516.

**Records To Be Kept By Employers**

Highlights: The FLSA sets minimum wage, overtime pay, recordkeeping, and youth employment standards for employment subject to its provisions. Unless exempt, covered employees must be paid at least the minimum wage and not less than one and one-half times their regular rates of pay for overtime hours worked.

Posting: Employers must display an official poster outlining the provisions of the Act, available at no cost from local offices of the Wage and Hour Division and toll-free, by calling 1-866-4USWage (1-866-487-9243). This poster is also available electronically for downloading and printing at http://www.dol.gov/osbp/sbrefa/poster/main.htm.

What Records Are Required: Every covered employer must keep certain records for each non-exempt worker. The Act requires no particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. The law requires this information to be accurate. The following is a listing of the basic records that an employer must maintain:

1. Employee's full name and social security number.
2. Address, including zip code.
3. Birth date, if younger than 19.
4. Sex and occupation.
5. Time and day of week when employee's workweek begins.
6. Hours worked each day.
7. Total hours worked each workweek.
8. Basis on which employee's wages are paid (e.g., "$9 per hour", "$440 a week", "piecework")
9. Regular hourly pay rate.
10. Total daily or weekly straight-time earnings.
11. Total overtime earnings for the workweek.
12. All additions to or deductions from the employee's wages.
13. Total wages paid each pay period.
14. Date of payment and the pay period covered by the payment.

How Long Should Records Be Retained: Each employer shall preserve for at least three years payroll records, collective bargaining agreements, sales and purchase records. Records on which wage computations are based should be retained for two years, i.e., time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages. These records must be open for inspection by the Division's representatives, who may ask the employer to make extensions, computations, or transcriptions. The records may be kept at the place of employment or in a central records office.

What About Timekeeping: Employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

The following is a sample timekeeping format employers may follow but are not required to do so:

| DAY | DATE | IN | OUT | TOTAL HOURS |
|---|---|---|---|---|
| Sunday | 6/3/07 | -------- | -------- | -------- |
| Monday | 6/4/07 | 8:00am | 12:02pm | |
| | | 1:00pm | 5:03pm | 8 |
| Tuesday | 6/5/07 | 7:57am | 11:58am | |
| | | 1:00pm | 5:00pm | 8 |
| Wednesday | 6/6/07 | 8:02am | 12:10pm | |
| | | 1:06pm | 5:05pm | 8 |
| Thursday | 6/7/07 | -------- | -------- | -------- |
| Friday | 6/8/07 | -------- | -------- | -------- |
| Saturday | 6/9/07 | -------- | -------- | -------- |
| **Total Workweek Hours:** | | | | **24** |

Employees on Fixed Schedules: Many employees work on a fixed schedule from which they seldom vary. The employer may keep a record showing the exact schedule of daily and weekly hours and merely indicate that the worker did follow the schedule. When a worker is on a job for a longer or shorter period of time than the schedule shows, the employer must record the number of hours the worker actually worked, on an exception basis.

**Where to Obtain Additional Information**

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Wage and Hour Division

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# Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning what constitutes compensable time under the FLSA. The Act requires that employees must receive at least the minimum wage and may not be employed for more than 40 hours in a week without receiving at least one and one-half times their regular rates of pay for the overtime hours. The amount employees should receive cannot be determined without knowing the number of hours worked.

**Definition of "Employ"**

By statutory definition the term "employ" includes "to suffer or permit to work." The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place. "Workday", in general, means the period between the time on any particular day when such employee commences his/her "principal activity" and the time on that day at which he/she ceases such principal activity or activities. The workday may therefore be longer than the employee's scheduled shift, hours, tour of duty, or production line time.

**Application of Principles**

Employees "Suffered or Permitted" to work: Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable.

**Waiting Time:** Whether waiting time is hours worked under the Act depends upon the particular circumstances. Generally, the facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was waiting to be engaged (which is not work time). For example, a secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for an alarm is working during such periods of inactivity. These employees have been "engaged to wait."

**On-Call Time:** An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.

**Rest and Meal Periods:** Rest periods of short duration, usually 20 minutes or less, are common in industry (and promote the efficiency of the employee) and are customarily paid for as working time. These short periods must be counted as hours worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.

**Sleeping Time and Certain Other Activities:** An employee who is required to be on duty for less than 24 hours is working even though he/she is permitted to sleep or engage in other personal activities when not busy. An employee required to be on duty for 24 hours or more may agree with the employer to exclude from hours worked bona fide regularly scheduled sleeping periods of not more than 8 hours, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. No reduction is permitted unless at least 5 hours of sleep is taken.

**Lectures, Meetings and Training Programs:** Attendance at lectures, meetings, training programs and similar activities need not be counted as working time only if four criteria are met, namely: it is outside normal hours, it is voluntary, not job related, and no other work is concurrently performed.

**Travel Time:** The principles which apply in determining whether time spent in travel is compensable time depends upon the kind of travel involved.

**Home to Work Travel:** An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.

**Home to Work on a Special One Day Assignment in Another City:** An employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.

**Travel That is All in a Day's Work:** Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.

**Travel Away from Home Community:** Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. As an enforcement policy the Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

**Typical Problems**

Problems arise when employers fail to recognize and count certain hours worked as compensable hours. For example, an employee who remains at his/her desk while eating lunch and regularly answers the telephone and refers callers is working. This time must be counted and paid as compensable hours worked because the employee has not been completely relieved from duty.

**Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).** This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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Sample Policy Statements

The following sample policy statements can be utilized as a starting point for employers to easily customize as part of their employee manual for their company. The policies can be customized by adding information specific to the company, such as a time keeping policy, workplace hours, etc. Suggestions and examples are included to give additional information and help determine the company's policies.

- The comments in **[brackets]** are prompts for employers to customize the Employee Manual for their company. As the company's information is inserted, the brackets should be deleted.

- The italicized comments in *(parentheses)* are instructions for employers while customizing the document. The italicized comments and parentheses should be deleted before distributing the Manual to employees.

**Sample 1**

**DEFINITIONS OF EMPLOYEES STATUS**

**"EMPLOYEES" DEFINED**
An "employee" of [Company Name] is a person who regularly works for [Company Name] on a wage or salary basis. "Employees" may include exempt, non-exempt, regular full-time, regular part-time, and temporary persons, and others employed with the Company who are subject to the control and direction of [Company Name] in the performance of their duties.

**EXEMPT**

*(Note: See a more in-depth discussion about exempt employees in Chapter 3 of this manual.)*

Employees whose positions meet specific criteria established by the Fair Labor Standards Act (FLSA) and who are exempt from overtime pay requirements.

**NON-EXEMPT**

Employees whose positions do not meet FLSA criteria and who are paid one and one-half their regular rate of pay for hours worked in excess of 40 hours per week.

**REGULAR FULL-TIME**

*(A 90-day probationary period is recommended for new employees. Your health insurance provider's plan usually specifies the number of hours per week an employee must work in order to be given full-time status. In most cases, 35 hours per week is considered full-time employment. Check with your insurance provider to be sure.)*

Employees who have completed the [90-day] probationary period and who are regularly scheduled to work [35] or more hours per week, generally are eligible for the Company's benefit package, subject to the terms, conditions, and limitations of each benefit program.

**REGULAR PART-TIME**

Employees who have completed the [90-day] probationary period and who are regularly scheduled to work less than [35] hours per week. [Regular part-time employees are eligible for some benefits sponsored by the Company, subject to the terms, conditions, and limitations of each benefit program.]

**TEMPORARY (FULL-TIME or PART-TIME)**

Those whose performance is being evaluated to determine whether further employment in a specific position or with the Company is appropriate or individuals who are hired as interim replacements to assist in the completion of a specific project or for vacation relief. Employment beyond any initially stated period does not in any way imply a change in employment status. Temporary employees retain that status until they are notified of a change. They are not eligible for any of the Company's benefit programs.

**PROBATIONARY PERIOD FOR NEW EMPLOYEES**

A new employee whose performance is being evaluated to determine whether further employment in a specific position or with [Company Name] is appropriate. When an employee completes the probationary period, the employee will be notified of his/her new status with [Company Name].

**OFFICE HOURS**

[Company Name] office is open for business from [XX a.m. to XX p.m. Day of Week through Day of Week], except for Holidays.

The standard workweek is [40] hours of work. In the computation of various employee benefits, the employee workweek is considered to begin on [Sunday (starting at 12:01 a.m.) through Saturday (ending at 12:00 a.m.)], unless a supervisor makes prior other arrangement with the employee.

**ATTENDANCE/PUNCTUALITY**

The Company expects that every employee will be regular and punctual in attendance. This means being in the office, ready to work, at their starting time each day. Absenteeism and tardiness places a burden on other employees and on the Company.

If you are unable to report for work for any reason, notify your supervisor before regular starting time. You are responsible for speaking directly with your supervisor about your absence. It is not acceptable to leave a message on a supervisor's voice mail, except in extreme

emergencies. In the case of leaving a voice-mail message, a follow-up call must be made later that day. The company phone number is [(XXX) XXX-XXXX].

Should undue tardiness become apparent, disciplinary action may be required.

If there comes a time when you see that you will need to work some hours other than those that make up your usual work week, notify your supervisor at least [seven working days] in advance. Each request for special work hours will be considered separately, in light of the employee's needs and the needs of the Company. Such requests may or may not be granted.

**WAGE OR SALARY INCREASES**

[Each employee's hourly wage or annual salary will be reviewed at least once each year. The employee's review date will usually be conducted on or about the anniversary date of employment or the date of the previous compensation review. Such reviews may be conducted more frequently for a newly created position, or based on a recent promotion.]

[Increases will be determined on the basis of performance, adherence to company policies and procedures, and ability to meet or exceed duties per job description and achieve performance goals.]

Although the Company's salary ranges and hourly wage schedules will be adjusted on an ongoing basis, [Company Name] does not grant "cost of living" increases. Performance is the key to wage increases in the Company.

**TIMEKEEPING**

(If you use a time clock, include the following.)

Accurately recording time worked is the responsibility of every non-exempt employee. Time worked is the time actually spent on a job(s) performing assigned duties. [Each client job is assigned a job number as posted in the Employee Message Center. Employees are responsible for accurately documenting their time spent on individual jobs.]

[Company Name] does not pay for extended breaks or time spent on personal matters.

The time clock is a legal instrument. Altering, falsifying, tampering with time records, or recording time on another team member's time record will result in disciplinary action, including termination of employment.

Authorized personnel will review time records each week. Any changes to an employee's time record must be approved by his/her supervisor [or appropriate person]. Questions regarding the timekeeping system or time cards should be directed to the [appropriate person].

> **Time Cards –** Non-exempt employees will be issued a time card on their first day of employment. The employee will be given thorough instructions on usage and instructions on what to do should a problem occur.

[Employees will be financially responsible for replacing the card if it is lost or stolen. Replacement cards are $X.XX.]

**PAYDAYS**

All employees are paid [insert appropriate time period here, i.e., weekly, monthly, etc.]. In the event that a regularly scheduled payday falls on a weekend or holiday, employees will receive pay [on the next day of operation].

If a regular payday falls during an employee's vacation, the employee's paycheck will be available upon his/her return from vacation.

[If the employee is not at work when paychecks are distributed and does not receive the paycheck, the paycheck will be kept at the reception desk through the rest of the payday. If an employee is unable to pick up his or her check on payday, he or she will need to see the company Bookkeeper or Human Resources Representative].

Paychecks will not, under any circumstances, be given to any person other than the employee without written authorization. Paychecks may also be mailed to the employee's address or deposited directly into an employee's bank account upon request.

**Sample 2**

ADMINISTRATIVE POLICY DISCLAIMER

This policy is based on the opinions of the Department of Labor on the subject of Wages and Hours Worked. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

**"Hours worked"** means all hours during which the employee is authorized or required, known or reasonably believed by the employer to be on duty on the employer's premises or at a prescribed work place. This may include all work requested, suffered, permitted or allowed and includes travel time, training and meeting time, wait time, on-call time, preparatory and concluding time, and may include meal periods. "Hours worked" includes all time worked regardless of whether it is a full hour or less. "Hours worked" includes, for example, a situation where an employee may voluntarily continue to work at the end of the shift. The employee may desire to finish an assigned task or may wish to correct errors, prepare time reports or other records. The reason or pay basis is immaterial. If the employer knows or has reason to believe that the employee is continuing to work, such time is working time.

**An employer may not avoid or negate payment of regular or overtime wages by issuing a rule or policy that such time will not be paid or must be approved in advance. If the work is performed, it must be paid. It is the employer's responsibility to ensure that employees do not perform work that the employer does not want performed.**

**Time spent driving in a company-provided vehicle**
Whether travel or commute time is compensable depends on the specific facts and circumstances of each individual employee and work week. If the travel or commute time is considered "hours worked," then it is compensable and the employee will be paid for this time. These statutory and regulatory requirements cannot be waived through a collective bargaining agreement or other agreement.

"Hours worked" means all hours when an employee is authorized or required to be on duty on the employer's premises or at a prescribed workplace.

There are three elements to the definition of hours worked:

1- An employee is authorized or required by the employer

2- to be on duty

3- on the employer's premises or at a prescribed workplace

If any of the three elements is not satisfied, then the time spent driving in a company-provided vehicle is not considered "hours worked." The specific factors used to establish the "authorized or required" element are not listed in this policy. However, the element must be met for "hours worked" under the law.

Time spent driving a company-provided vehicle during an employee's ordinary travel, when the employee is not on duty and performs no work while driving between home and the first or last job site of the day, is not considered hours worked.

Time spent driving a company-provided vehicle from the place of business to the job site is considered hours worked. Time spent riding in a company-provided vehicle from the place of business to the job site is not considered hours worked when an employee voluntarily reports to the location merely to obtain a ride as a passenger for the employee's convenience, is not on duty, and performs no work. Time spent driving or riding as a passenger from job site to job site is considered hours worked.

**Factors that will be considered in determining IF AN EMPLOYEE IS "on duty" when driving a company-provided vehicle between home and work.**
To determine if the employee is on duty, you must evaluate the extent to which the employee's personal activities are restricted and controls the employee's time. This includes an analysis of the frequency and extent of such restrictions and control. Following is a non-exclusive list of factors to consider when making a determination if an employee is "on duty." There may be additional relevant factors that are not included in this policy. All factors must be considered and weighed in combination with each other. The mere presence or absence of any single factor is not determinative.

1. The extent to which the employee is free to make personal stops and engage in personal activities during the drive time between home and the first or last job site of the day, or whether the vehicle may only be used for company business.

2. The extent to which the employee is required to respond to work related calls or to be redirected while en route.

3. Whether the employee is required to maintain contact with their supervisor.

4. The extent to which the employee receives assignments at home and must spend time writing down the assignments and mapping the route to reach the first job site before beginning the drive.

**Factors that will be considered in determining if an employee is "on the employer's premises or at a prescribed work place" when driving a company-provided vehicle between home and work.**

To determine if a company-provided vehicle constitutes a "prescribed work place," the Company will evaluate whether driving the particular vehicle is an integral part of the work performed by the employee. Following is a non-exclusive list of factors to consider when making a determination if an employee is "on the employer's premises or at a prescribed work place." There may be additional relevant factors not listed in this policy. All factors must be considered and weighed in combination with each other. The mere presence or absence of any single factor is not determinative.

1. Whether the nature of the business requires the employee to drive a particular vehicle provided by the employer to carry necessary non-personal tools and equipment to the work site.

2. The extent to which the company-provided vehicle serves as a location where the Company authorizes or requires the employee to complete business required paperwork or load materials or equipment.

3. The extent to which the Company requires the employee to ensure that the vehicle is kept clean, organized, safe, and serviced.

**The following are two examples of how this policy may be used to determine whether or not drive time between home and the first or last job site of the day in a company-provided vehicle is compensable. These examples are illustrative and are not intended to create additional factors or address other scenarios where the facts differ from those below.**

**COMPENSABLE EXAMPLE:**

1. In this example, the facts establish that the drive time between home and the first or last job site of the day in a company-provided vehicle is compensable. For purposes of this example, all of the following facts are present. The employee drives between home and the first or last job site of the day in a company-provided vehicle:

- As a matter of accepted company practice, the employee is prohibited from any personal use of the vehicle, which must be used exclusively for business purposes; and

- The Company regularly requires the employee to perform services for the employer during the drive time including being redirected to a different location; and

- The employee regularly transports necessary non-personal tools and equipment in the vehicle between home and the first or last job site of the day; and

- The employee receives his/her daily job site assignments at home in a manner that requires the employee to spend more than a de minimis amount of time writing down the assignments and mapping travel routes for driving to the locations.

**NON COMPENSABLE EXAMPLE:**
2. In this example, the facts establish that the drive time between home and the first or last job site of the day in a company-provided vehicle is not compensable. For purposes of this example, all of the following facts are present. The employee drives between home and the first or last job site of the day in a company-provided vehicle:

- The Company does not strictly control the employee's ability to use the vehicle for personal purposes. E.g., the employee, as a matter of accepted company practice, is able to use the vehicle for personal stops or errands while driving between home and the job site; and

- The employee is not required to perform any services for the Company during the drive including responding to work related calls or redirection; and

- The employee does not perform any services for the Company during the drive including work related calls or redirection.

**Training and meeting time as "hours worked"**
Training and meeting time is generally interpreted to mean all time spent by employees attending lectures, meetings, employee trial periods and similar activities required by the employer, or required by state regulations, and shall be considered hours worked.
Time spent by employees in these activities will *not* be counted as hours worked if all of the following tests are met:

Attendance is voluntary; and
The employee performs no productive work during the meeting or lecture; and
The meeting takes place outside of regular working hours; and

The meeting or lecture is not directly related to the employee's current work, as distinguished from teaching the employee another job or a new, or additional, skill outside of skills necessary to perform job.

If the employee is given to understand, or led to believe, that the present working conditions or the continuance of the employee's employment, would be adversely affected by non-attendance, time spent shall be considered hours worked.

Time spent in training programs mandated by state or federal regulation, but *not* by the Company, will not be paid if the first three provisions are met; that is, if attendance is voluntary, the employee performs no productive work during the training time, and the training takes place outside of normal working hours.

Where the Company (or someone acting on the Company's behalf), either directly or indirectly, requires an employee to undergo training, the time spent is clearly compensable. The Company in such circumstances has controlled the employee's time and must pay for it. However, where the state has required the training and such state-required training is of a general applicability, and not tailored to meet the particular needs of the Company, the time spent in such training would not be compensable.

When state or federal regulations require a certificate or license of the employee for the position held, time spent in training to obtain the certificate or license, or certain continuous education requirements, will not be considered hours worked. The cost of maintaining the certificate or license may be borne by the employee.

**"Waiting time"**

In certain circumstances employees report for work but due to lack of customers or production, the Company may require them to wait on the premises until there is sufficient work to be performed. "Waiting time" is all time that employees are required or authorized to report at a designated time and to remain on the premises or at a designated work site until they may begin their shift. During this time, the employees are considered to be engaged to wait, and all hours will be considered hours worked.

When a shutdown or other work stoppage occurs due to technical problems, such time spent waiting to return to work will be considered hours worked *unless* the employees are completely relieved from duty and can use the time effectively for their own purposes. For example, if employees are told in advance they may leave the job and do not have to commence work until a certain specified time, such time will not be considered hours worked. If the employees are told they must "stand by" until work commences, such time will be paid.

**"Show up" pay**

The Company is not required by law to give advance notice to change an employee's shift or to shorten it or lengthen it, thus there is no legal requirement for show-up pay. That is, when employees report to work for their regularly scheduled shift but the Company has no work to be performed, and the employees are released to leave the Company's premises or designated work site, the Company is not required to pay wages if no work has been performed.

**“On-call” time**
Whether or not employees are "working" during on-call depends upon whether they are required to remain on or so close to the Company's premises that they cannot use the time effectively for their own purposes.

Employees who are not required to remain on the Company's premises but are merely required to leave word with Company officials or at their homes as to where they may be reached are not working while on-call. If the Company places restrictions on where and when the employee may travel while “on call,” this may change the character of that “on call” status to being engaged in the performance of active duty. The particular facts must be evaluated on a case-by-case basis.

**Preparatory and concluding activities**
Preparatory and concluding activities are those activities that are considered integral or necessary to the performance of the job. Those duties performed in readiness and/or completion of the job shall be considered hours worked. When an employee does not have control over when and where such activities can be made, such activities shall be considered as hours worked.

Examples may include the following:

- Employees who cannot perform their principal activities without putting on certain personal protective equipment (PPE), or changing clothes, on the Company’s premises at the beginning and end of the workday.

- Counting money in the till (cash register) before and after the shift, and other related paperwork.

- Preparation of equipment for the day’s operation, i.e., greasing, fueling, warming up vehicles; cleaning vehicles or equipment; loading, and similar activities.

**Sample 3**

**Hours of Duty and Work Schedule Company Policy**

A **basic workweek** is the officially prescribed days and hours during which a full-time employee is entitled to basic pay. The basic work week for all full-time employees in the Company is 8:30 a.m. to 5:00 p.m., Monday through Friday, including a daily non-compensable lunch period of 30 minutes. Variations from the basic workweek may be authorized by the head of an operating unit or an official to whom personnel management authority is delegated. A basic workweek may not extend over more than six of any seven consecutive days.

A **regularly scheduled administrative workweek** is the period an employee is regularly scheduled to work within an administrative workweek (i.e., a period of seven consecutive 24-hour periods designated in advance). For a full-time employee, it consists of the 40-hour basic workweek plus any periods of regularly scheduled overtime work. For a part-time employee, it

means the officially prescribed days and hours during which the employee is regularly scheduled to work.

An employee's shift is the hours of a day (a daily shift) and the days of an administrative workweek (a weekly shift) that constitute an employee's regularly scheduled administrative workweek.

An employee's shift is to be scheduled so it corresponds with the employee's actual work requirements and ensures that functions are adequately staffed during office or company operating hours.

**Scheduling Considerations**. A regularly scheduled administrative workweek must be established for every full-time employee unless the employee works a first 40-shift, is paid annual premium pay for standby duty, works a flexible or compressed work schedule, or is intermittent.

When an assignment to a new shift is necessary, an employee must be given as much advance notice as possible. Unless there is a bargaining unit agreement that states otherwise, it is standard practice that schedules be established by 6 p.m. Friday of the week prior to the one in which the time will be worked. A schedule may need to be established earlier depending on the hour a majority of the employees depart the workplace. Absent a bargaining unit agreement, published policy, posted schedule or notification that says otherwise, an employee's schedule is deemed set for the following week at that time.

**Special Shifts**

**Part-time Employment**. Part-time schedules may be established when the workload will not support full-time employment or when an employee asks to work part-time and the request can be accommodated. A permanent part-time employee may not work less than 16 hours or more than 32 hours in a week. Temporary part-time employees are not held to these limitations.

Part-time employment may be scheduled in quarter-hour increments, e.g., Monday 9:15 a.m. to 3:00 p.m., in departments that charge leave in quarter-hour increments, however, the end result may not be a biweekly shift with fractions (e.g., 17 ½ hours, etc.). Otherwise, part-time schedules must be established in whole hours.

When a part-time employee's schedule changes to full-time for more than two consecutive pay periods, the change must be documented to ensure the employee's leave, service credit and benefits are appropriately applied.

**Intermittent Employment**. Intermittent work schedules may be established when the work of a less than full-time position is so sporadic and unpredictable that a shift cannot be scheduled in advance. The hours when the employee's services are required constitute the hours of their shift.

When the work of an intermittent employee becomes regularly scheduled in nature, i.e., for more than two consecutive pay periods, the employee's schedule must be changed for the same reasons outlined above under part-time employment.

**Mixed Shifts**. Because of changing workloads, employees may be scheduled to a mixed shift which includes periods of full-time, part-time, and intermittent or furlough employment. Employees who are hired to work a mixed shift as a condition of employment are exempt from the 16- to 32-hour-per-week part-time employment restriction.

**First 40 Hours Shift**. When the work situation is such that it is impossible to schedule the hours or days of a regularly scheduled administrative work-week, but employees will perform at least 40 hours of work in an administrative work-week, the employee may be assigned to a shift which consists of the first 40 hours of work performed over not more than 6 days of the administrative workweek. This situation is not limited to -- but is not uncommon in -- scientific and engineering environments.

**Changing a Shift**

Assignments to shifts must be scheduled in advance of the administrative workweek over periods of not less than one week. A regularly scheduled administrative workweek must be rescheduled whenever it is known in advance that based on work requirements the specific days and hours of a day actually required of an employee will differ from those required in the current administrative workweek. The employee shall be informed of the change and the change must be recorded on the employee's time and attendance report.

An employee's shift may not be changed solely to avoid paying premium pay to which the employee would otherwise be entitled or to avoid the costs incurred because of a holiday, absence for military or court leave, absence resulting from an on-the-job injury, or absence in connection with funerals of immediate relatives in the armed forces.

Rescheduling could be required for such purposes as to permit an employee's attendance in a training class (as described below) or conference, when an employee under an Alternative Work Schedule (AWS) is in travel status at a location not under an AWS, or to substitute for an absent employee's shift.

**Rescheduling for Educational Purposes**. A special shift may be authorized to permit an employee to take one or more courses at college, university, or other educational institution. In this situation, the courses cannot be training under the Government Employees' Training Act; the rescheduling will not prevent the employee from accomplishing required work; additional costs for personal services will not be incurred; and completion of the courses will equip the employee for more effective work in the Company.

Varied work hours under this heading must be requested by the employee in writing.

**Scheduling Travel**

Employee travel should be scheduled to take place during regular working hours to the extent possible. However, an employee may be required to travel on personal time, e.g., after normal working hours, on weekends or a holiday. A supervisor who requires an employee to perform travel on personal time, when such travel is not compensable by premium pay must, if the employee requests it, provide reasons in writing for ordering the employee to travel during

those hours. A copy of the statement must be retained with the employee's time and attendance report.

**Scheduling Lunch Periods**

Any workday of five hours or more includes a 30-minute non-compensable lunch period. This may be extended to one hour if the workday is correspondingly extended.

An employee may not work through the lunch period in order to extend paid time or to otherwise modify his or her established schedule.

**Scheduling Breaks**

Compensable rest periods during the workday may be authorized for health and safety or efficiency reasons. Rest periods must not exceed 15 minutes during each four-hour period of work. They must not be scheduled immediately before or after lunch periods or at the start or end of a workday. Employees are generally not authorized to leave the work place during rest periods because they are in pay status.

**Scheduling Preparation and Clean Up Time**

A reasonable amount of the scheduled workday may be set aside for preparation and clean-up activities. If this kind of activity cannot be included in an employee's scheduled work-day, up to 30 minutes overtime may be authorized.

**Daylight Savings Time**

An employee working on a shift when daylight savings time goes into effect will be credited with the actual number of hours worked on that shift. If an employee is not permitted to work an additional hour, the hour lost in the change to daylight savings time will be charged to annual leave, accrued compensatory time, accrued credit hours, if on a flexible alternative work schedule, or leave without pay (LWOP) as appropriate. An employee working on shift upon return to standard time is credited for the actual number of hours worked on that shift.

Recordkeeping Requirements

The FLSA requires employers to keep records on wages, hours worked and other items, as specified in Department of Labor regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. (See Fact Sheet #21 under the "Pertinent DOL/WD Fact Sheet" section of this chapter)

The FLSA requires employers to keep records on wages, hours, and other items, as specified in the U.S. Department of Labor's recordkeeping regulations (29 CFR Part 516).

Every covered employer must keep certain records for each non-exempt worker. The FLSA doesn't require a particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. The law requires this information to be accurate. With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following is a list of the 14 essential records that an employer must maintain:

1. Employee's full name and social security number
2. Address, including zip code
3. Birth date, if younger than 19
4. Gender and occupation
5. Time and day of week when the employee's workweek begins
6. Hours worked each day
7. Total hours worked each workweek
8. Basis on which employee's wages are paid (e.g., "$9 per hour", "$440 a week")
9. Regular hourly pay rate
10. Total daily or weekly straight-time earnings
11. Total overtime earnings for the workweek
12. All additions to or deductions from the employee's wages
13. Total wages paid each pay period
14. Date of payment and the pay period covered by the payment

Once all the required information above has been gathered, a common question that employers ask is, "How long do these records need to be retained?" The law requires that employers preserve their payroll records, collective bargaining agreements, sales and purchase records for *at least three years*. Records on which wage computations are based should be retained for two years, such as time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages. These records must be open for inspection by representatives of the WHD, who may ask the employer to make extensions, computations, or transcriptions. The records may be kept at the place of employment or in a central records office.

A follow-up question that employers frequently ask is, "What about timekeeping?" The FLSA allows for some flexibility here, as employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employees' work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

After the employer has gathered the essential records, placed them in a desirable format and employs a timekeeping method that ensures accuracy, it is important for them to consider how the FLSA defines the terms “workweek” and “hours worked” so that they pass any potential audit from the WHD. As defined in the law, a “workweek” is a period of 168 hours during 7 consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day, as established by the employer. Generally, for purposes of minimum wage and overtime payment, each workweek stands alone, meaning that there can be no averaging of 2 or more workweeks. This is because employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis. Since covered employees must be paid for all hours worked in a workweek, the FLSA defines the term “hours worked” as “all of the time that an employee must be on duty and on the employer's premises or at any other prescribed place of work, from the beginning of the first principal activity of the work day to the end of the last principal work activity of the workday.”

The same WHD representatives who inspect employers for the accuracy of their recordkeeping policies are the same inspectors who are able to cite employers for any violations of the FLSA’s provisions. Employers who are mindful of the 14 essential records they must maintain and how to maintain them will not only stand the best chance of passing a WHD audit, but will also avoid any civil monetary penalties stemming from FLSA recordkeeping violations.

**Insignificant Periods of Time**

In recording working time under the act, infrequent and insignificant periods of time beyond the scheduled working hours, which cannot as a practical matter be precisely recorded for payroll purposes may be disregarded. The courts have held that such periods of time are de minimis (insignificant). This rule applies only where there are uncertain and indefinite periods of time involved, a few seconds or minutes in duration, and where the failure to count such time is justified by industrial realities. As noted below, an employer may not arbitrarily fail to count any part, however small, of working time that can be practically ascertained.

For example, after clocking in the employer assigns their employee to another job. He or she transported his or her tools to the new job area and then informed that the foreman that he or she was ill and went home without doing any additional work or clocking out. The time spent transporting the tools would be considered de minimis or insignificant because it was limited to this one time only.

The employer must count as hours worked any part, however small, of an employee’s fixed or regular working time or identifiable periods of time he or she is regularly required to spend on duties assigned to him or her.

This policy is one that must be applied with common sense recognizing the practical realities of recording identifiable work time. Setting an artificial time limit is not sufficient. One must consider how frequently the activity is performed and whether the activity is actually part of the work the employee was hired to do.

**Use of Time Clocks**

Time clocks are not required under the FLSA. In those cases where time clocks are used, if an employee voluntarily comes in before his or her regular starting time or remains after quitting time, he or she does not have to be paid for such periods provided, of course, that the employee does not do any work during this time. Early or late punching is not hours worked when no work is done.

Likewise, minor differences between the clock records and actual hours worked cannot ordinarily be avoided since all employees cannot clock in or out at precisely the same time. Major discrepancies should be discouraged, however, since doubt is raised as to the accuracy of the record of hours actually worked.

In some industries, particularly where time clocks are used, there has been the practice for many years of recording the employee's starting and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, these arrangements average out so all of the time actually worked by the employee is properly counted and the employee is fully compensated for all the time actually worked. Such practices of recording working time are acceptable, provided they do not result, over a period of time, in failure to count as hours worked all the time the employees have actually worked.

# Wages and Hours Worked Self-Audit Checklist

Under the Fair Labor Standards Act, employees are entitled to receive at least the minimum wage for hours worked. Utilize the following checklist when determining compensable time to assist in compliance efforts with the FLSA.

*The following points should be considered when computing an employee's compensable time:*

- ❑ Employees being paid at least the minimum wage mandated by federal or state law.
- ❑ Once applicable deductions (for items such as cash shortages, uniforms or tools of the trade) are taken into account, employees are still earning at least the minimum wage.

*Employees' compensable time takes into account the following:*

- ❑ Pre-employment testing
- ❑ Preliminary and postliminary activities (i.e. donning and doffing PPE, prepping equipment)
- ❑ Rework
- ❑ Meeting/Training Programs
- ❑ Time spent waiting for work
- ❑ Off-duty time
- ❑ On-call time
- ❑ Time working from home
- ❑ Travel time

*Accurate records of the following are maintained for each employee for at least 3 years:*

- ❑ Employee's full name and social security number
- ❑ Address, including zip code
- ❑ Birth date, if younger than 19
- ❑ Gender and occupation
- ❑ Time and day of week when the employee's workweek begins
- ❑ Hours worked each day
- ❑ Total hours worked each workweek
- ❑ Basis on which employee's wages are paid (e.g., "$9 per hour," "$440 a week")
- ❑ Regular hourly pay rate
- ❑ Total daily or weekly straight-time earnings
- ❑ Total overtime earnings for the workweek
- ❑ All additions to or deductions from the employee's wages
- ❑ Total wages paid each pay period
- ❑ Date of payment and the pay period covered by the payment

Audit Conducted by _____ Date _____

Signature _____

# Overtime Pay

Overview

The FLSA established the expectation that workers would have a normal workweek of 40 hours. This means that for each hour an employee works beyond 40 hours worked in a week, he or she is guaranteed the right to overtime pay – known as "time and a half". However, any "employee employed in a bona fide executive, administrative, or professional capacity" is exempt from the overtime pay rules and therefore, not entitled to overtime pay whenever he or she works more than a 40 hour workweek (29 CFR 541).

Several years ago, the DOL estimated that 120 million employees were being treated as "hourly" or non-exempt employees under the FLSA and, therefore, entitled to overtime pay. To address this, in 2004, the DOL updated the regulations for exempt employees (also known as the "white-collar" worker). The final regulations changed the legal exemptions from the right to overtime pay for executives, professionals and administrative employees. These regulations, also known as the FairPay rules, took effect in August 2004.

**Calculating Overtime Pay**

Overtime must be paid at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee (except for certain statutory exclusions explained below). The following examples are based on a maximum 40-hour workweek applicable to most covered nonexempt employees.

1. **Hourly rate** (regular pay rate for an employee paid by the hour) - If more than 40 hours are worked, at least one and one-half times the regular rate for each hour over 40 is due.

   **Example**: An employee paid $8.00 an hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times $8.00, or $12.00, for each hour over 40. Pay for the week would be $320 for the first 40 hours, plus $48.00 for the four hours of overtime - a total of $368.00.

2. **Piece rate** - The regular rate of pay for an employee paid on a piecework basis is obtained by dividing the total weekly earnings by the total number of hours worked in that week. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the full piecework earnings.

   **Example**: An employee paid on a piecework basis works 45 hours in a week and earns $405. The regular rate of pay for that week is $405 divided by 45, or $9.00 an hour. In addition to the straight-time pay, the employee is also entitled to $4.50 (half the regular rate) for each hour over 40 - an additional $22.50 for the 5 overtime hours - for a total of $427.50.

   Another way to compensate pieceworkers for overtime, if agreed to before the work is performed, is to pay one and one-half times the piece rate for each piece produced

during the overtime hours. The piece rate must be the one actually paid during non-overtime hours and must be enough to yield at least the minimum wage per hour.

3. **Salary** - The regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the salary.

If, under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours are worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week. To illustrate, suppose an employee's hours of work vary each week and the agreement with the employer is that the employee will be paid $480 a week for whatever number of hours of work are required. Under this agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is $9.60 ($480 divided by 50 hours). In addition to the salary, half the regular rate, or $4.80, is due for each of the 10 overtime hours, for a total of $528 for the week. If the employee works 60 hours, the regular rate is $8.00 ($480 divided by 60 hours). In that case, an additional $4.00 is due for each of the 20 overtime hours for a total of $560 for the week.

In no case may the regular rate be less than the minimum wage required by the FLSA.

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime pay. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

**Exemptions**

Some employees are exempt from the overtime pay provisions or both the minimum wage and overtime pay provisions.

Because exemptions are generally narrowly defined under the FLSA, an employer should carefully check the exact terms and conditions for each. Detailed information is available from local WHD offices.

Following are examples of exemptions which are illustrative, but not all-inclusive. These examples do not define the conditions for each exemption.

***Exemptions from Both Minimum Wage and Overtime Pay***

1. Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations (as defined in DOL regulations);

2. Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
3. Farm workers employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding calendar year;
4. Casual babysitters and persons employed as companions to the elderly or infirm.

***Exemptions from Overtime Pay Only***

1. Certain commissioned employees of retail or service establishments; auto, truck, trailer, farm implement, boat, or aircraft sales-workers; or parts-clerks and mechanics servicing autos, trucks, or farm implements, who are employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers;
2. Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans;
3. Announcers, news editors, and chief engineers of certain non-metropolitan broadcasting stations;
4. Domestic service workers living in the employer’s residence;
5. Employees of motion picture theaters; and
6. Farm workers.

***Partial Exemptions from Overtime Pay***

1. Partial overtime pay exemptions apply to employees engaged in certain operations on agricultural commodities and to employees of certain bulk petroleum distributors.
2. Hospitals and residential care establishments may adopt, by agreement with their employees, a 14-day work period instead of the usual 7-day workweek if the employees are paid at least time and one-half their regular rates for hours worked over 8 in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours.
3. Employees who lack a high school diploma, or who have not attained the educational level of the 8th grade, can be required to spend up to 10 hours in a workweek engaged in remedial reading or training in other basic skills without receiving time and one-half overtime pay for these hours. However, the employees must receive their normal wages for hours spent in such training and the training must not be job specific.
4. Public agency fire departments and police departments may establish a work period ranging from 7 to 28 days in which overtime need only be paid after a specified number of hours in each work period.

**Exempt and Nonexempt Employees**

In addition, the FairPay Overtime Rule exempts specified employees or groups of employees from the application of certain of its provisions. As such, every employee is categorized, based on their job, as either exempt or nonexempt.

***An FLSA exempt employee*** is one who *is not covered* by the minimum wage and overtime provisions of the FLSA. “Salaried” workers generally fall into this category. These employees are not entitled to overtime pay under the FLSA.

**An *FLSA nonexempt* employee** is one who *is covered* by the minimum wage and overtime provisions of the Act. These employees are entitled to overtime pay under the FLSA.

Some jobs are classified as exempt by definition. For example, "outside sales" employees are exempt ("inside sales" employees are nonexempt). For most employees, however, whether they are exempt or nonexempt depends on (a) how much they are paid, (b) how they are paid, and (c) what kind of work they do.

**Determining Which Employees May Be Exempt**

To be considered exempt under the regulations, “white collar” employees must:

(1) be compensated above a specified “minimum salary level,”
(2) be paid on a “salary basis”, and
(3) perform certain “duties” that involve managerial, administrative or professional skill.

I. SALARY LEVEL TEST

The minimum salary level for exemption is $455 per week or $23,660 per year.

The regulations also provide a streamlined test for “highly compensated employees” who are paid at least $100,000 per year (including base salary, commissions, and non-discretionary bonuses.) To qualify for the exemption, the employee must:

(1) be paid at least $455 per week in base salary,
(2) perform office or non-manual work, and
(3) customarily and regularly perform one or more exempt job duties within the executive, administrative, professional, outside sales or computer tests.

A potential issue for employers is part-time employees performing exempt jobs. The rules do not allow the employer to pro-rate a full-time salary for the position to still be eligible as an exempt job, so all employers can do is increase the part-timer’s pay to a level of $455 per week.

II. SALARY BASIS TEST

(1) Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
(2) The compensation cannot be reduced because of variations in the quality or quantity of the work performed
(3) Must be paid the full salary for any week in which the employee performs *any* work
(4) Need not be paid for any workweek when no work is performed

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 business.

If the employee is ready, willing and able to work, deductions may not be made for time when work in not available.

There are seven exceptions from the "no pay-docking" rule:

1. Absence from work for one or more full days for personal reasons, other than sickness or disability
2. Absence from work for one or more full days due to sickness or disability if deductions made under a bona fide plan, policy or practice of providing wage replacement benefits for these types of absences
3. To offset any amounts received as payment for jury fees, witness fees, or military pay
4. Penalties imposed in good faith for violating safety rules of "major significance"
5. Unpaid disciplinary suspension of one or more full days imposed in good faith for violations of workplace conduct rules
6. Proportionate part of an employee's full salary may be paid for time actually worked in the first and last weeks of employment
7. Unpaid leave taken pursuant to the Family and Medical Leave Act

Examples of improper salary deductions include:

- Deduction for a partial-day absence to attend a parent-teacher conference
- Deduction of a day of pay because the employer was closed due to inclement weather
- Deduction of three days of pay because the employee was absent from work for jury duty, rather than merely offsetting any amount received as payment for the jury duty
- Deduction for a two day absence due to a minor illness when the employer does not provide wage replacement benefits for such absences

An actual practice of making improper deductions from salary will result in the loss of the exemption:

- During the time period in which improper deductions were made
- For employees in the same job classifications
- Working for the same managers responsible for the actual improper deductions

Isolated or inadvertent improper deductions, however, will not result in the loss of exempt status if the employer reimburses the employee.

The exemption will not be lost if the employer:

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

*Unless* the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

III. JOB DUTIES TEST

To determine the duties of a job, the former short and long tests were replaced by a "standard duties test" which requires a case-by-case analysis by Wage and Hour's enforcement staff. Most notably, the rule encourages employers to treat non-degreed employees as professionals, as long as they have "substantially similar" knowledge and do substantially similar work. There is no requirement that they receive substantially similar pay. The rule also reduces the requirement that an exempt executive manage "the enterprise in which he is employed or of a customarily recognized department or subdivision thereof," to a new level where it will be enough to be in charge of a "grouping or team." The Labor Department suggests that a "case-by-case analysis is required" – giving employers the ability to use its discretion. For example, department stores may argue that an employee "in charge of" the perfume counter is an exempt executive because he or she has the "authority" to suggest shift assignments for two other employees.

Section 13(a)(1) of the FLSA provides an exemption for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees.

**A. Executive Test (29 CFR 541.100-106)**
Employees must:
(1) Be paid a minimum salary of $455 per week.
(2) Have the primary duty of the management of the enterprise or recognized department, business unit or division.
(3) Customarily and regularly direct the work of two or more other employees.
(4) Have the authority to hire, fire, promote or provide performance reviews or whose recommendation to hire, fire etc. has particular weight.

With respect to Element 2, the regulations discuss the definition of "primary duty". Specifically, executive exemption covers and employee with a bona fide 20% ownership interest in an enterprise and who is actively engaged in its management, regardless of the employee's salary. The regulations also state that supervisors in retail establishments generally do qualify as exempt executive employees even if the majority of their time is spent on nonexempt work.

With respect to Element 3, this rule can apply to any level supervisor.

With respect to Element 4, the regulations provide that "particular weight" depend on whether it is part of the employee's regular job to make such recommendations; the frequency with which recommendations are made; and how effective the recommendations are.

**B. Administrative Test (29 CFR 541.200-204)**
Employees must:
(1) Be paid a minimum salary of $455 per week.
(2) Have the primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or customers.
(3) Customarily and regularly exercise discretion and judgment in matters of significance to the organization.

Most employers will easily identify many employees that satisfy elements 1 and 2 above. Element 3, however, is the element that gives employers room to make a discretionary determination. Two or more of the following examples of activities may reflect the exercise of "discretion and independent judgment with respect to matter of significance" **even if the employer employs a number of employees for the same task and their decisions or recommendations are reviewed at a higher level**:

- Employee has the authority to formulate, affect, interpret, or implement management policies or operating practices;
- Employee carries out major assignments in conducting the operations of the business;
- Employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business;
- Employee has the authority to commit the employer in matters that have significant financial impact;
- Employee has the authority to waive or deviate from established policies and procedures without prior approval;
- Employee has the authority to negotiate and bind the company on significant matters;
- Employee provides consultation or expert advice to management;
- Employee is involved in planning long- or short-term business objectives;
- Employee investigates and resolves matters of significance on behalf of management; and
- Employee represents the company in handling complaints, arbitrating disputes, or resolving grievances.

**C. Professional Test (29 CFR 541.300-304)**

Employees must:
(1) Be paid a minimum salary of $455 per week.
(2) Have the primary duty of performing office or non-manual work requiring knowledge of an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which can be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience, or
(3) Perform work requiring invention, imagination, originality, or talent recognized in an artistic field of study or creative endeavor.

Element 2 gives the employer the opportunity to research (even check the internet's "online classes") to see if intellectual instruction is available for office or non-manual work that, together with work experience, would equate to knowledge that is usually obtained through long academic instruction.

**D. Computer Test (29 CFR 541.400-402)**

Employees must:
(1) Be paid a minimum salary of $455 per week or an hourly rate of not less than $27.63.
(2) Be involved in the application of systems analysis techniques and procedures, the design, development testing of computer systems or programs, or any combination of the aforementioned duties.

The final regulations eliminate the prior requirement for salaried employees that the employee "consistently exercise discretion and judgment." The Labor Department also avoided stating job title examples of computer employees, because of the rapid and frequent changes in the information technology industry. These two omissions create an opportunity to treat some lower level computer employees as exempt from the overtime pay rules.

**E. Outside Sales Test (29 CFR 541.500-504)**
Employees must:
(1) Be selling or obtaining orders or contracts of services.
(2) Regularly engaged away from the employer's place of business.

The rules requirement that the employee be regularly engaged away from the employer's place of business can be interpreted as more than occasionally but less than constantly. So, with more and more computer-electronic sales occurring, if a sales person sells away from the place of business on 2 times a week (even if it is from the employee's home), this employee may still qualify as exempt.

The following are examples of employees whose job duties and pay could result in treatment as an exempt "white-collar" employee:

**I. Employees Paid $100,000.** It is likely that most employees who earn $100,000 a year or more loses his or her right to overtime pay. As inflation and rising productivity increase the pay of American workers, the number of employees adversely affected by this new test will grow each year. And, if, at the end of a year, the employee has not earned $100,000, the employer can, in its discretion, make an additional payment to the employee during the last pay period or by the end of the first month after year-end to get the employee's compensation for the year up to $100,000.

**II. Employee Paid under $100,000.** If the facts and circumstances exist, many employees that were previously thought to be non-exempt because they performed mostly manual labor or only obtained a high school diploma, trade schooling or even internet-based classes taken after high school may be considered exempt under the FairPay Overtime Rules. Any employee who earns between $23,660 and $100,000 a year may be ineligible for overtime pay.

**A. Teachers.** While preschool employees whose primary duty is to protect and care for the needs of the children would not ordinarily meet the requirements for exemption as teachers, such employees in "childhood education settings" (for ages 0-5) may engage in some basic educational activities for the children attending. The FairPay Overtime Rule removed the discretion and judgment requirement from the current regulation's definition of a professional employee in current section 541.3(b) and placed it in the definition of "work requiring advanced knowledge" at 541.301(b) – a provision that applies only to learned professionals. Thus, under the rule, all nursery teachers are likely exempt.

**B. Low-level Supervisors.** An employee can spend 100% of his time performing ordinary, routine, repetitive, non-exempt production tasks and yet still be a bona fide executive by concurrently or simultaneously performing "executive" duties such as supervision of two other employees. Section 541.106(b) provides:

"For example, an assistant manager in a retail establishment may perform work such as serving customers, cooking food, stocking shelves, and cleaning the establishment, but performance of such nonexempt work does not preclude the exemption if the assistant manager's primary duty is management. An assistant manager can supervise employees and serve customers at the same time without losing the exemption. An exempt employee can also simultaneously direct the work of other employees and stock shelves."

Therefore, employees who spend the vast majority of their time doing blue-collar, manual labor will now be subject to exemption as "bona fide executives" as long as the employer can establish that their most important duty is supervisory.

**C. Cooks.** The rule treats "chefs and sous chefs" with a four-year degree as exempt learned professionals. In addition, the rule extends the exemption for creative professionals to chefs and sous chefs even though cooking has never been found by a court to meet the test of being "a recognized field of artistic or creative endeavor," as required by Section 541.302(a) or the current law's test for artistic professionals – "a recognized field of artistic endeavor." Section 541.302(b).

The rule also permits employers to deny overtime pay to chefs or cooks who have "substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction." As the Department of Labor's Occupational Outlook Handbook points out, "many chefs are trained on the job," "others may receive formal training in independent cooking schools," and still others get two-year degrees or learn through apprenticeships sponsored by industry associations and trade unions. The creative professional exemption legalizes the denial of overtime to non-degreed chefs who do not have executive duties, effectively catching any chef the other exemptions missed, since every chef creates unique new recipes.

There are millions of cooks and chefs who are fast food cooks, institution and cafeteria cooks, or short order cooks, and are unlikely to be exempted, whatever their skills might be. The other chefs, head cooks, and restaurant cooks are fair game for the three exemptions, depending on their skills and creativity – and the creativity of their employers.

**D. Funeral directors and embalmers.** These employees are treated as exempt learned professional employees by the Labor Department. The rules created an exemption requiring only four years of post-secondary education, including a year of mortuary science school (which includes courses in cosmetology, according to the court in Rutlin v. Prime Succession, Inc.).

**E. Financial Services Industry Employees.** A blanket exemption under the rule.

**F. Team Leaders.** The use of self-managed teams of non-managerial, non-supervisory, front-line employees is widespread in American industry, and millions of employees are routinely involved in them. The regulations provide no definition of "team leader," and it has never been defined in FLSA case law. Therefore, employers have a great deal of room to determine whose job duties are such that the employee would be a team leader resulting in exempt status. Current law has no equivalent provision, and we have found no case that holds

"team leaders" to be exempt even if they have no supervisory duties. The term "team leader" is widely used in American industry, and usually describes a non-management employee responsible for calling meetings and directing a group of front-line employees who have been given an important task of a kind that historically was reserved to management, such as improving efficiency and productivity, improving customer service, researching and implementing IT improvements, identifying safety problems and recommending solutions, or improving employee morale. It appears that the management of a team would transform a manual laborer or other blue-collar employee into a "management blue-collar employee," leading to exemption and loss of overtime pay.

Section 541.203(c) states:

Employees whose work is "directly related" to management policies or to general business operations include those whose work affects policy or whose responsibility it is to carry it out. The phrase also includes a wide variety of persons who either carry out major assignments in conducting the operations of the business, or whose work affects business operations to a substantial degree.

**G. Police Officers and other First Responders.** The rights of police officers are vague under the rule. The rule makes it easier to find that an employee's primary duty is an exempt duty, because it allows employees to spend unlimited amounts of their time doing non-exempt work (work such as investigating crime scenes, making arrests, etc.) and yet still be found exempt. Police officers could also be exempt if they are deemed "team leaders," whose primary duty is presumed by the final rule to be administrative.

**H. Management Blue-Collar Worker.** Section 541.3 provides that the "exemptions do not apply to manual laborers or other 'blue-collar' workers who perform work involving repetitive operations with their hands, physical skill and energy." Anyone doing any such work would seem to be a non-exempt employee under the rule, but the Department has thrown in a qualifier that destroys any illusion of clarity. Section 541.3 goes on to say that "non-management production-line employees and non-management employees in maintenance, construction and similar occupations… are not exempt under the regulations." This raises the question: What is a management blue-collar employee? What is a management production line worker? The answer is in Section 541.106: an employee can spend all day doing production work or construction work – manual, blue-collar work – and be exempt as a bona fide executive as long as he simultaneously supervises two other employees. Construction and utility crews all over America work without any manager higher than a working foreman to supervise them, a more senior employee charged with ensuring the safety and quality of the work, even as he works side-by-side with the other laborers. If his most important duty is managing the other employees, his employer may exempt him as a bona fide executive who concurrently does exempt and non-exempt work. Because the regulations specifically limit overtime rights to "non-management blue-collar employees," it is possible that a new class of exempt workers known as "management blue-collar employees" will develop. An employer can use the Exempt Employee Checklist to analyze whether a blue-collar employee performs team leader type of functions.

**I. Anyone with Concurrent Duties.** The concurrent duties test in 541.106 is a good example of how the rule provides opportunities for interpreting the job duties of an employee. The rule abandons the bright line test that an employee who spends more than 80% of his time

doing nonexempt work cannot be a bona fide executive and replaces it with language that forces the employer and employee to make a determination on a "case-by-case basis and based on the factors in section 541.700."

**J. Any non-degreed employee that performs a job similar to a degreed employee.** The learned professional exemption, which has required, except in rare instances, that any bona fide exempt professional must have a specialized academic degree (a clear, objective test), is expanded in the rule to permit non-degreed employees to be exempted and denied overtime pay if they have "substantially the same knowledge and do substantially the same work" as the degreed professionals.

As the Department of Labor admits, the lower paid an employee is, the less likely it is that he or she is exempt as a bona fide executive, professional or administrator. Therefore, the prudent employer who has determined that an employee qualifies under one or more of the job duties test and is frequently paid the minimum level, when taking into account the employee's current base salary and overtime pay, should consider increasing the base pay of such employee to permit compliance with the white-collar exempt employee treatment. Further, such employer should carefully document the employee's salary and job duties to satisfy a government or attorney review. Finally, such employers should adopt policies and procedures consistent with the deduction pay rules, so that it may deduct the pay of an exempt employee for disciplinary actions without fear of converting that employee from the salaried to the hourly classification.

**Auditing Exempt / Non-Exempt Status Classifications**

The most important of the employer's many compliance responsibilities under the FairPay Overtime Rules is auditing employee job duties and salary levels to ensure that they are correctly classified as "exempt" or "non-exempt" under the revised rules. Employers can implement the following steps when conducting their audit:

A. Identifying Affected Employees
    1. Compile a list of the current pay rates, job duties, and current status (exempt or non-exempt) of all company employees. Labor law attorneys and HR experts recommend creating a file folder for each employee so that related exemption-related paperwork can be filed together.
    2. Remove from this list any blue-collar workers, workers covered by contracts or collective bargaining agreements, nurses, policemen, firefighters or other first-responder employees that do not have any team leader, unit leader, or management type of duties.
    3. Separate employees into the following subgroups:
        - Hourly employees (i.e. currently treated as non-exempt employees) whose gross annual wages are or expected to be less than $23,660
        - Hourly employees (i.e. currently treated as non-exempt employees) whose gross annual wages are or expected to be between $23,660 and $100,000.
        - Salaried employees earning less than $455 per week (or less than $23,660 per year).
        - Salaried employees earning between $23,660 and $100,000 per year.
        - Highly compensated workers earning $100,000 or more.

B. Reviewing Job Descriptions
    1. Review some of the jobs duties employees have that may mean the employee is or should be treated as an exempt, salaried employee.
    2. Obtain copies of the job description for each "exempt" employee, each "highly-compensated" worker, as well as any "non-exempt" employees who may now be eligible for the exempt status.
    3. Review the job descriptions to determine their accuracy in relation to the actual duties of the corresponding employees.
    4. To determine the accuracy of a job description, or if no job description exists, use the Job Duties Analysis Form included in the Documentation section of this manual to have the employee self-report their actual day-to-day job duties. This form should be completed by the employee and reviewed by his/her direct supervisor.
    5. As needed, create / revise job descriptions based upon the employee's self-reported actual duties.

C. Use Job Descriptions and Job Analyses to Determine If Any Workers Need to Be Reclassified
    1. Once the job descriptions are created, revised, or deemed accurate, use them in conjunction with the Exempt Duties Checklists (included in the Documentation section of this manual) to audit each employee's exempt / non-exempt status classification. This audit will help you identify whether any changes need to be made to the employee's status. Additionally, this process may help you determine whether a wage increase or a minor change in job duties is necessary to retain or apply an exemption.
    2. Once the audit process is complete, separate these employees into two groups:
        - Non-exempt employees (make sure that employees in this group are compensated for overtime hours worked according to the FairPay Overtime Rules.
        - Exempt employees

**Implementing Exemption Eligibility Procedures**

Under the FLSA, non-exempt employees who have been denied overtime pay have the right to initiate DOL enforcement actions or file lawsuits on their own behalf. The employer is responsible for ensuring that non-exempt workers are not misclassified as exempt. As such, it is critical that employers review the duties tests before classifying any employee as non-exempt.

To ensure that new hires, transfers, and promoted employees are properly classified as exempt or non-exempt, employers should implement a procedure to verify their exemption eligibility before making any change in status from non-exempt to exempt. Before switching any employee from hourly to salary, complete an Exemption Checklist Form (included in the Documentation section of this manual). Additionally, as job duties change or as employees acquire licenses, degrees, certificates, etc. through continuing education, employers should re-evaluate the employee's status.

This procedure should be assigned to the HR manager, though some employers may wish to involve other management level employees in the process of verifying an employee's exempt status.

**Affected Policies**

The FairPay Overtime Rules include provisions relating to disciplinary suspensions, improper salary deductions, and salary deduction policies.

**Disciplinary Suspensions** - The rules allow employers to deduct wages from an employee's salary in full-day increments for disciplinary suspensions. All policies that make specific reference to suspensions should communicate that supervisors or managers may suspend employees without pay in full-day increments for violating company rules or policies. Another approach would be to create and implement a policy regarding salary deductions for disciplinary suspensions.

**Salary Deductions** – Prior to the FairPay Overtime Rules, improper salary deductions resulted in the loss of the exempt status for an entire class of employees in the same establishment. As a result, employers who improperly deducted wages from exempt salaries found themselves subject to DOL enforcement actions for back wages and lost overtime pay. The FairPay rules provide a "safe harbor" to employers who establish a salary deductions policy that includes a complaint procedure for reporting an improper deduction. Employers, who have already established a salary deductions policy, should review it to ensure that it includes a specific complaint procedure.

**Other Affected Policies** – Since salary deductions for disciplinary suspensions are limited to violations of workplace conduct rules, employers may consider revising any policy relating to workplace conduct by adding unpaid suspensions to the list of disciplinary actions that may be imposed for violations. Policies that may be affected include those pertaining to safety rules, sexual harassment, workplace violence, or theft.

Recent Cases and Settlements

The following cases exemplify circumstances in which the DOL took action against employers who violated regulations pertaining to overtime wages:

**DOL recovers more than $1 million in overtime wages for employees of US Army contractor**

The DOL's Wage and Hour Division resolved an investigation against contractor CALNET Inc. and two subcontractors providing language, intelligence and information technology services to the U.S. Army at Ft. Irwin, Calif. The three companies had paid employees improperly for on-call time.

Investigations conducted by the Wage and Hour Division determined that the prime contractor and subcontractors violated the FLSA by not properly compensating workers for all on-call time, resulting in overtime violations. The employers also were found to be in violation of FLSA recordkeeping requirements for failing to maintain proper records of the number of hours worked by employees and the compensation they were paid.

The three companies have paid their employees a total of $1,060,554 in back wages owed for the period between October 2008 and October 2010. The prime contractor paid $676,698 to 597 employees. One subcontractor paid $234,311 to 177 employees while the other subcontractor paid $149,545 to 91 employees.

On-call time becomes compensable under the FLSA when the on-call conditions are so restrictive or the calls to duty so frequent that the employee cannot effectively use on-call time for personal purposes.

**Trucking and Excavating Company to repay nearly $51,000 in employee back wages**

A federal district court in Indiana entered a consent order and judgment requiring Wheatfield, IN-based Trucking and Excavating Company and its owner to repay $50,952 in back wages to 31 employees. The judgment followed an investigation conducted by the U.S. Department of Labor’s Wage and Hour Division into alleged violations of the Fair Labor Standards Act.

The investigation disclosed that the company violated the FLSA by failing to pay workers time and one-half their regular rates for hours worked exceeding 40 in a week.

The judgment required the repayment of back wages, including overtime compensation and interest, to employees who worked for the company from Nov. 1, 2003, through May 27, 2007. The judgment also stipulated that the company and its owner must not violate the FLSA in the future.

**DOL recovers nearly $160,000 in back wages for 110 Los Angeles garment workers**

A major clothing manufacturer was ordered to pay $158,952 in back wages owed to 110 garment workers who worked for one of the company's Los Angeles-based sewing contractors. The action results from an agreement between the manufacturer and the U.S. Department of

Labor following an investigation by the department's Wage and Hour Division that found the contractor failed to pay the workers minimum wage and overtime as required by FLSA.

The contractor worked finishing jeans for a jean company that were later shipped throughout the U.S. and sold at major department stores including Macy's, Neiman Marcus, Dillard's, Bloomingdale's, Saks Fifth Avenue and Nordstrom.

Investigators found that the contractor paid its employees on a piece-rate basis without regard for minimum wage and overtime pay requirements for all hours worked, including some Saturdays and Sundays. Additionally, the investigators found that weekend work was not recorded on employee time cards.

The jean company paid the full amount of back wages for a two-year period and agreed to a plan promoting compliance by all its contractors. Under the plan, the Company will conduct periodic monitoring of its contractors for FLSA compliance. The plan also calls for various education and outreach efforts, and a discussion about the financial terms of the contracts to ensure the contractors' financial ability to comply. Although in this case the jean company stepped forward to cover the full amount of back wages due, the Wage and Hour Division also assessed the contractor and its owners $41,140 in civil money penalties for willfully violating the law by falsifying employees' time records.

**Supermarket and food distributor to pay more than $63,000 for willful violations of overtime pay laws**

The DOL fined a local company that operates as a supermarket and food distributor $63,470 for willfully violating the overtime pay provisions of the FLSA following an investigation by the department’s Wage and Hour Division. The division also conducted a follow-up investigation and determined that the company owed 119 employees $169,100 in back wages for unpaid overtime.

“We found identical violations during an investigation in 1998,” said George Friday Jr., administrator of the Wage and Hour Division’s Western Region. “We will not hesitate to penalize an employer for intentionally and repeatedly failing to pay workers as the law requires.”

Investigators from the Wage and Hour Division found that the company paid employees straight time for overtime hours worked. Investigators also determined that the employer failed to combine the total hours employees worked at the business’s multiple operations when determining whether employees should have received time and one-half their regular rates of pay when their total hours worked at the locations exceeded 40 in a week. In addition, some workers were paid on a salaried basis who should have qualified for overtime pay.

Pertinent DOL/WHD Fact Sheets

**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet #23: Overtime Pay Requirements of the FLSA

This fact sheet provides general information concerning the application of the overtime pay provisions of the FLSA.

**Characteristics**

An employer who requires or permits an employee to work overtime is generally required to pay the employee premium pay for such overtime work.

**Requirements**

Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. There is no limit in the Act on the number of hours employees aged 16 and older may work in any workweek. The Act does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, as such.

The Act applies on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours -- seven consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees. Averaging of hours over two or more weeks is not permitted. Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned.

The regular rate of pay cannot be less than the minimum wage. The regular rate includes all remuneration for employment except certain payments excluded by the Act itself. Payments which are not part of the regular rate include pay for expenses incurred on the employer's behalf, premium payments for overtime work or the true premiums paid for work on Saturdays, Sundays, and holidays, discretionary bonuses, gifts and payments in the nature of gifts on special occasions, and payments for occasional periods when no work is performed due to vacation, holidays, or illness.

Earnings may be determined on a piece-rate, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing the total pay for employment (except for the statutory exclusions noted above) in any workweek by the total number of hours actually worked.

Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs. In addition, section 7(g)(2) of the FLSA allows, under specified conditions, the computation of overtime pay based on one and one-half times the hourly rate in effect when the overtime work is performed. The requirements for computing overtime pay pursuant to section 7(g)(2) are prescribed in 29 CFR 778.415 through 778.421.

Where non-cash payments are made to employees in the form of goods or facilities, the reasonable cost to the employer or fair value of such goods or facilities must be included in the regular rate.

**Typical Problems**

Fixed Sum for Varying Amounts of Overtime: A lump sum paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money paid is equal to or greater than the sum owed on a per-hour basis. For example, no part of a flat sum of $180 to employees who work overtime on Sunday will qualify as an overtime premium, even though the employees' straight-time rate is $12.00 an hour and the employees always work less than 10 hours on Sunday. Similarly, where an agreement provides for 6 hours pay at $13.00 an hour regardless of the time actually spent for work on a job performed during overtime hours, the entire $78.00 must be included in determining the employees' regular rate.

Salary for Workweek Exceeding 40 Hours: A fixed salary for a regular workweek longer than 40 hours does not discharge FLSA statutory obligations. For example, an employee may be hired to work a 45 hour workweek for a weekly salary of $405. In this instance the regular rate is obtained by dividing the $405 straight-time salary by 45 hours, resulting in a regular rate of $9.00. The employee is then due additional overtime computed by multiplying the 5 overtime hours by one-half the regular rate of pay ($4.50 x 5 = $22.50).

Overtime Pay May Not Be Waived: The overtime requirement may not be waived by agreement between the employer and employees. An agreement that only 8 hours a day or only 40 hours a week will be counted as working time also fails the test of FLSA compliance. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance, also will not impair the employee's right to compensation for compensable overtime hours that are worked.

**Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**U.S. Department of Labor**
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

**1-866-4-USWAGE**
TTY: 1-866-487-9243
**Contact Us**

**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

## Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for executive, administrative, professional, computer and outside sales employees, and for more information on the salary basis requirement.

**Executive Exemption**
To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than $455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

**Administrative Exemptions**
To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $455 per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

**Professional Exemption**
To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $455 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $455 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

**Computer Employee Exemption**
To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than $455 per week **or**, if compensated on an hourly basis, at a rate not less than $27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
  1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

**Outside Sales Exemption**
To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

**Highly Compensated Employees**
Highly compensated employees performing office or non-manual work and paid total annual compensation of $100,000 or more (which must include at least $455 per week paid on a salary or fee basis) are exempt from the

FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

**Blue Collar Workers**

The exemptions provided by FLSA Section 13(a)(1) apply only to "white collar" employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other "blue collar" workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

**Police, Fire Fighters, Paramedics & Other First Responders**

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

**Other Laws & Collective Bargaining Agreements**

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

**Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet #17B: Exemption for Executive Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for administrative, professional, computer and outside sales employees, and for more information on the salary basis requirement.

**Executive Exemption**

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than $455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

**Primary Duty**

"Primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

**Management**

Generally, "management" includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity

and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

**Department or Subdivision**

The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function.

**Customarily and Regularly**

The phrase "customarily and regularly" means greater than occasional but less than constant; it includes work normally done every workweek, but does not include isolated or one-time tasks.

**Two or More**

The phrase "two or more other employees" means two full-time employees or their equivalent. For example, one full-time and two half-time employees are equivalent to two full-time employees. The supervision can be distributed among two, three or more employees, but each such employee must customarily and regularly direct the work of two or more other full-time employees or the equivalent. For example, a department with five full-time nonexempt workers may have up to two exempt supervisors if each supervisor directs the work of two of those workers.

**Particular Weight**

Factors to be considered in determining whether an employee's recommendations as to hiring, firing, advancement, promotion or any other change of status are given "particular weight" include, but are not limited to, whether it is part of the employee's job duties to make such recommendations, and the frequency with which such recommendations are made, requested, and relied upon. Generally, an executive's recommendations must pertain to employees whom the executive customarily and regularly directs. It does not include occasional suggestions. An employee's recommendations may still be deemed to have "particular weight" even if a higher level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status.

**Exemption of Business Owners**

Under a special rule for business owners, an employee who owns at least a bona fide 20-percent equity interest in the enterprise in which employed, regardless of the type of business organization (e.g., corporation, partnership, or other), and who is actively engaged in its management, is considered a bona fide exempt executive.

**Highly Compensated Employees**

Highly compensated employees performing office or non-manual work and paid total annual compensation of $100,000 or more (which must include at least $455 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet #17C: Exemption for Administrative Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for executive, professional, computer and outside sales employees, and for more information on the salary basis requirement.

**Administrative Exemption**
To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $455 per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

**Primary Duty**
"Primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

**Directly Related to Management or General Business Operations**
To meet the "directly related to management or general business operations" requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example from working on a manufacturing production line or selling a product in a retail or service establishment. Work "directly related to management or general business operations" includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, Internet and database administration; legal and regulatory compliance; and similar activities.

**Employer's Customers**
An employee may qualify for the administrative exemption if the employee's primary duty is the performance of work directly related to the management or general business operations of the employer's customers. Thus, employees acting as advisors or consultants to their employer's clients or customers — as tax experts or financial consultants, for example — may be exempt.

**Discretion and Independent Judgment**
In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term must be applied in the light of all the facts involved in the employee's particular employment situation, and implies that the employee has authority to make an independent choice, free from immediate direction or supervision. Factors to consider include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval, and other factors set forth in the regulation. The fact that an employee's decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources.

**Matters of Significance**
The term "matters of significance" refers to the level of importance or consequence of the work performed. An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee's duties may cause serious financial loss to the employer.

**Educational Establishments and Administrative Functions**
The administrative exemption is also available to employees compensated on a salary or fee basis at a rate not less than $455 a week, or on a salary basis which is at least equal to the entrance salary for teachers in the same educational establishment, and whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment. Academic administrative functions include operations directly in the field of education, and do not include jobs relating to areas outside the educational field. Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system, and any assistants responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; the principal and any vice-principals responsible for the operation of an elementary or secondary school; department heads in institutions of higher education responsible for the various subject matter departments; academic counselors and other employees with similar responsibilities. Having a primary duty of performing administrative functions directly related to academic instruction or training in an educational establishment includes, by its very nature, exercising discretion and independent judgment with respect to matters of significance.

**Highly Compensated Employees**
Highly compensated employees performing office or non-manual work and paid total annual compensation of $100,000 or more (which must include at least $455 per week paid on a salary or fee basis) are exempt from the

FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

**Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

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**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet #17D: Exemption for Professional Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

The specific requirements for exemption as a bona fide professional employee are summarized below. There are two general types of exempt professional employees: learned professionals and creative professionals.

See other fact sheets in this series for more information on the exemptions for executive, administrative, computer and outside sales employees, and for more information on the salary basis requirement.

## Learned Professional Exemption

To qualify for the learned professional employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $455 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

### Primary Duty

"Primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

**Work Requiring Advanced Knowledge**

"Work requiring advanced knowledge" means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment. Professional work is therefore distinguished from work involving routine mental, manual, mechanical or physical work. A professional employee generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.

**Field of Science or Learning**

Fields of science or learning include law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other occupations that have a recognized professional status and are distinguishable from the mechanical arts or skilled trades where the knowledge could be of a fairly advanced type, but is not in a field of science or learning.

**Customarily Acquired by a Prolonged Course of Specialized Intellectual Instruction**

The learned professional exemption is restricted to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best evidence of meeting this requirement is having the appropriate academic degree. However, the word "customarily" means the exemption may be available to employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction. This exemption does not apply to occupations in which most employees acquire their skill by experience rather than by advanced specialized intellectual instruction.

**Creative Professional Exemption**

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $455 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

**Invention, Imagination, Originality or Talent**

This requirement distinguishes the creative professions from work that primarily depends on intelligence, diligence and accuracy. Exemption as a creative professional depends on the extent of the invention, imagination, originality or talent exercised by the employee. Whether the exemption applies, therefore, must be determined on a case-by-case basis. The requirements are generally met by actors, musicians, composers, soloists, certain painters, writers, cartoonists, essayists, novelists, and others as set forth in the regulations. Journalists may satisfy the duties requirements for the creative professional exemption if their primary duty is work requiring invention, imagination, originality or talent. Journalists are not exempt creative professionals if they only collect, organize and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product.

**Recognized Field of Artistic or Creative Endeavor**

This includes such fields as, for example, music, writing, acting and the graphic arts.

**Teachers**

Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment. Exempt teachers include, but are not limited to, regular academic teachers; kindergarten or nursery school teachers; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrument music teachers. The salary and salary basis requirements do not apply to bona fide teachers. Having a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge includes, by its very nature, exercising discretion and judgment.

**Practice of Law or Medicine**

An employee holding a valid license or certificate permitting the practice of law or medicine is exempt if the employee is actually engaged in such a practice. An employee who holds the requisite academic degree for the general practice of medicine is also exempt if he or she is engaged in an internship or resident program for the profession. The salary and salary basis requirements do not apply to bona fide practitioners of law or medicine.

**Highly Compensated Employees**

Highly compensated employees performing office or non-manual work and paid total annual compensation of $100,000 or more (which must include at least $455 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

**Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

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**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet #17E: Exemption for Employees in Computer-Related Occupations Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay for employees in the computer field under Sections 13(a)(1) and 13(a)(17) of the FLSA and Regulations 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the Federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) and Section 13(a)(17) of the FLSA provide an exemption from both minimum wage and overtime pay for computer systems analysts, computer programmers, software engineers, and other similarly skilled workers in the computer field who meet certain tests regarding their job duties and who are paid at least $455 per week on a salary basis or paid on an hourly basis, at a rate not less than $27.63 an hour.

Job titles do not determine exempt status. In order for this exemption to apply, an employee's specific job duties and compensation must meet all the requirements of the Department's regulations. The specific requirements for the computer employee exemption are summarized below.

See other fact sheets in this series for more information on the exemptions for executive, administrative, professional, and outside sales employees, and for more information on the salary basis requirement.

**Computer Employee Exemption**

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated either on a salary or fee basis at a rate not less than $455 per week or, if compensated on an hourly basis, at a rate not less than $27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
  1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

The computer employee exemption does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-

aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in the primary duties test described above, are also not exempt under the computer employee exemption.

**Primary Duty**

"Primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

**Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/esa/contacts/state_of.htm.

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**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet #17F: Exemption for Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for executive, administrative, professional, and computer employees, and for more information on the salary basis requirement.

**Outside Sales Exemption**

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

The salary requirements of the regulation do not apply to the outside sales exemption. An employee who does not satisfy the requirements of the outside sales exemption may still qualify as an exempt employee under one of the other exemptions allowed by Section 13(a)(1) of the FLSA and the Part 541 regulations if all the criteria for the exemption is met.

**Primary Duty**
"Primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole.

**Making Sales**
"Sales" includes any sale, exchange, contract to sell, consignment for sales, shipment for sale, or other disposition. It includes the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property.

**Obtaining Orders or Contracts for Services or for the Use of Facilities**
Obtaining orders for "the use of facilities" includes the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies. The word "services" extends the exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

**Customarily and Regularly**
The phrase "customarily and regularly" means greater than occasional but less than constant; it includes work normally done every workweek, but does not include isolated or one-time tasks.

**Away from Employer's Place of Business**
An outside sales employee makes sales at the customer's place of business, or, if selling door-to-door, at the customer's home. Outside sales does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls. Any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property.

**Promotion Work**
Promotion work may or may not be exempt outside sales work, depending upon the circumstances under which it is performed. Promotional work that is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is exempt work. However, promotion work that is incidental to sales made, or to be made, by someone else is not exempt outside sales work.

**Drivers Who Sell**
Drivers who deliver products and also sell such products may qualify as exempt outside sales employees only if the employee has a primary duty of making sales. Several factors should be considered in determining whether a driver has a primary duty of making sales, including a comparison of the driver's duties with those of other employees engaged as drivers and as salespersons, the presence or absence of customary or contractual arrangements concerning amounts of products to be delivered, whether or not the driver has a selling or solicitor's license when required by law, the description of the employee's occupation in collective bargaining agreements, and other factors set forth in the regulation.

**Where to Obtain Additional Information**

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When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

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**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet #17G: Salary Basis Requirement and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for executive, administrative, professional, computer and outside sales employees.

**Salary Basis Requirement**
To qualify for exemption, employees generally must be paid at not less than $455 per week on a salary basis. These salary requirements do not apply to outside sales employees, teachers, and employees practicing law or medicine. Exempt computer employees may be paid at least $455 on a salary basis ***or*** on an hourly basis at a rate not less than $27.63 an hour.

Being paid on a "salary basis" means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to exceptions listed below, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any workweek in which they perform no work. If the employer makes deductions from an employee's predetermined salary, i.e., because of the operating requirements of the business, that employee is not paid on a "salary basis." If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

**Circumstances in Which the Employer May Make Deductions from Pay**
Deductions from pay are permissible when an exempt employee: is absent from work for one or more full days for personal reasons other than sickness or disability; for absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness; to offset amounts employees receive as jury or witness fees, or for military pay; for penalties imposed in good faith for infractions of safety rules of major significance; or for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions. Also, an employer is not required to pay the full salary in the initial or terminal week of employment, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act.

**Effect of Improper Deductions from Salary**
The employer will lose the exemption if it has an "actual practice" of making improper deductions from salary. Factors to consider when determining whether an employer has an actual practice of making improper deductions include, but are not limited to: the number of improper deductions, particularly as compared to the number of employee infractions warranting deductions; the time period during which the employer made improper deductions; the number and geographic location of both the employees whose salary was improperly reduced and the managers responsible; and whether the employer has a clearly communicated policy permitting or prohibiting improper deductions. If an "actual practice" is found, the exemption is lost during the time period of the deductions for employees in the same job classification working for the same managers responsible for the improper deductions.

Isolated or inadvertent improper deductions will not result in loss of the exemption if the employer reimburses the employee for the improper deductions.

**Safe Harbor**
If an employer (1) has a clearly communicated policy prohibiting improper deductions and including a complaint mechanism, (2) reimburses employees for any improper deductions, and (3) makes a good faith commitment to comply in the future, the employer will not lose the exemption for any employees unless the employer willfully violates the policy by continuing the improper deductions after receiving employee complaints.

**Fee Basis**
Administrative, professional and computer employees may be paid on a "fee basis" rather than on a salary basis. If the employee is paid an agreed sum for a single job, regardless of the time required for its completion, the employee will be considered to be paid on a "fee basis." A fee payment is generally paid for a unique job, rather than for a series of jobs repeated a number of times and for which identical payments repeatedly are made. To determine whether the fee payment meets the minimum salary level requirement, the test is to consider the time worked on the job and determine whether the payment is at a rate that would amount to at least $455 per week if the employee worked 40 hours. For example, an artist paid $250 for a picture that took 20 hours to complete meets the minimum salary requirement since the rate would yield $500 if 40 hours were worked.

**Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**U.S. Department of Labor**
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

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**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet #17H: Highly-Compensated Workers and the Part 541-Exemptions Under the Fair Labor Standards Act (FLSA)

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hour worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 in a workweek. However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempts certain computer employees. To qualify for exemption, employees must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455 per week.

## Highly-Compensated Workers

The regulations contain a special rule for "highly-compensated" workers who are paid total annual compensation of $100,000 or more. A highly compensated employee is deemed exempt under Section 13(a)(1) if:

1. The employee earns total annual compensation of $100,000 or more, which includes at least $455 per week paid on a salary basis;
2. The employee's primary duty includes performing office or non-manual work; and
3. The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

Thus, for example, an employee may qualify as an exempt highly-compensated executive if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements in the standard test for exemption as an executive.

## Total Annual Compensation

The required total annual compensation of $100,000 or more may consist of commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period, but does not include credit for board or lodging, payments for medical or life insurance, or contributions to retirement plans or other fringe benefits.

## Make-up Payments and Prorating

There are special rules for prorating the annual compensation if employees work only part of the year, and which allow payment of a single lump-sum, make-up amount to satisfy the required annual amount at the end of the year and similar make-up payments to employees who terminate before the year ends.

## Customarily and Regularly

"Customarily and regularly" means greater than occasional but may be less than constant, and includes work normally and recurrently performed every workweek but does not include isolated or one-time tasks.

**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet #17I: Blue-Collar Workers and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hour worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 in a workweek. However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempts certain computer employees. To qualify for exemption, employees must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455 per week.

**Blue-Collar Workers**

The exemptions provided by FLSA Section 13(a)(1) do not apply to manual laborers or other "blue-collar" workers who perform work involving repetitive operations with their hands, physical skill and energy. Such nonexempt "blue-collar" employees gain the skills and knowledge required for performance of their routine manual and physical work through apprenticeships and on-the-job training.

FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under Section 13(a)(1) of the FLSA nor the regulations at 29 CFR Part 541, no matter how highly paid they might be.

**Where to Obtain Additional Information**

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Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet 17R: Administrative Duties Test: Court Decision

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hour worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 in a workweek. However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempts certain computer employees. To qualify for exemption, employees must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455 per week.

**Equally Protective Duties Tests; Exemption Not Based on Job Titles**

The standard duties tests of the final regulations are effective August 23, 2004, and are as protective as, if not more protective than, the short duties test of the old regulations. Prior to the issuance of these final regulations, the last major revision of the duties tests occurred in 1949. The duties tests of the old regulations were complicated and contained difficult provisions to apply. These old regulations were based upon a work place that has experienced dramatic transformations and were not relevant to the work environment of the 21st century. The final regulations use objective, plain language so that employees can understand their rights to overtime pay and employers can know their responsibilities for overtime pay.

Recently, the United States District Court for the District of Columbia confirmed that the standard duties tests for the administrative exemption of the final regulations are substantially the same as those in the old regulation. In a case brought against Government Employees Insurance Company (GEICO) under the old regulation, insurance claims adjusters were seeking overtime pay. GEICO claimed it was not liable for any overtime pay because these adjusters were exempt administrative employees. The court looked to the final regulations that are effective August 23, 2004 for guidance in concluding that GEICO improperly classified the employees as administratively exempt. Even though the final regulations were not in effect when the court announced its decision, it found that "they are instructive with respect to the Department of Labor's interpretation of the requirements of the administrative exemption." The court also observed that "[t]he general criteria for employees employed in a bona fide administrative capacity are **essentially the same** under the August 2004 regulations as in the current regulations." Thus, this decision confirms that the standard administrative duties tests of the final regulations are equally protective as the old regulations.

The decision also is instructive because it confirms that the exemption does not apply based upon job title alone, but rather that a case-by-case assessment of an employee's job duties is required. Thus, there is no blanket exemption for claims adjusters, and when such an individualized inquiry is made, some claims adjusters will fail to satisfy the tests for exemption.

**Where to Obtain Additional Information**

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Sample Policy Statements

**Sample 1**

**Overtime Policy**

[Company Name] is open for business [XX] hours per week. Overtime compensation is paid to non-exempt employees in accordance with federal and state wage and hour restrictions. Overtime is payable for all hours worked over [40] per week at a rate of one and one-half times the non-exempt employee's regular hourly rate. Time off on personal time, holidays, or any leave of absence will not be considered hours worked when calculating overtime. In addition, vacation time does not constitute hours worked.

All overtime work performed by an hourly employee must receive the [supervisor's] prior authorization. Overtime worked without prior authorization from the [supervisor] may result in disciplinary action. [The supervisor's] signature on a timesheet authorizes pay for overtime hours worked.

**Sample 2**

**1. Employees are generally entitled to overtime compensation for hours worked in excess of forty per week.** Unless an employee is exempt from the Minimum Wage Act or from overtime requirements, he or she must be compensated at an overtime rate of at least at one and one-half times his or her regular rate of pay for all hours in excess of forty in a seven-day workweek. Overtime pay is required regardless of whether the employee is paid hourly or in some other manner, (commission, piecework, salary, non-discretionary bonus, etc., combinations thereof, or an alternative pay structure combined with an hourly rate) or whether payment is made on a daily, weekly bi-weekly, semi-monthly, monthly or other basis.

There is no limitation on the number of hours an employee may work in a workweek. An employer can require mandatory overtime but must compensate the employee accordingly. Overtime compensation is due when an employee works more than 40 hours in a workweek, regardless of whether the hours are worked on a Saturday, Sunday or holiday. The overtime requirement may not be waived by agreement between an employee and employer. A declaration by an employer that no overtime work will be permitted, or that overtime work will not be paid unless authorized in advance, is not a defense to an employee's right to compensation for any overtime hours actually worked. The right to overtime compensation cannot be waived by individual employee agreement or by collective bargaining agreement.

**2. If an employee must be paid overtime, how is the amount due calculated?**
If an employee is due overtime compensation for hours over 40 in a workweek, it must be paid at a rate "not less than one and one-half times the regular rate at which he [or she] is employed."

• **Employees paid a single hourly rate.** Employees who are paid a single, hourly rate must be paid at least one and one- half their regular hourly rate of pay for each hour worked in excess of 40 in a seven-day workweek.

• **Employees paid other than at a single hourly rate.** For example, non-exempt salaried employees, piece rate, commission, non-discretionary bonus, and combinations of the above, including one or more of the above combined with an hourly rate, are also entitled to overtime pay at a rate of at least one and one-half the “regular rate” at which they are employed.

**Examples of Regular Rate In Various Situations:**

• **Hourly rate.** When an employee is paid solely on the basis of a single hourly rate, the hourly rate is the "regular rate." For overtime hours, the employee must be paid one and one-half times the hourly rate for each hour over 40 in the workweek.

• **Piece rate.** When an employee is paid on a piece rate basis, the regular rate of pay is computed by adding together the total earnings for the workweek from piece rate and all other earnings (such as bonuses), and any sums that may be paid for other hours worked. This sum is divided by the total number of hours worked in that week to yield the pieceworker's "regular rate" for that week. For the overtime work, the employee is owed, in addition to the total straight-time weekly earnings, one-half the regular rate for each hour over 40 in the workweek. The employee has already received straight-time compensation for all hours worked and only additional half-time pay is required.

• **Day rates/job rates.** An employee may be paid a flat sum for a day's work, or for doing a particular job, without regard to the number of hours worked in the day or at the job, and receive no other form of compensation. In such a case, the employee's "regular rate" is found by totaling all the sums received at such day rates or job rates in the work week and divided by the total hours actually worked. The employee must be paid an additional one-half pay at this rate for each hour over 40 in the workweek. The employee has already received straight-time compensation for all hours worked and only the additional half-time pay is required.

• **Payment of salary.** Salary payment arrangements must include a mutually understood agreement between employer and employee specifying the number of hours per week for which the salary is intended to cover. In the absence of a clear understanding of the number of hours to be included in the weekly salary, the department will consider the salary agreement to be based on 40 hours.

• **Salary—weekly.** When an employee is employed solely on a weekly salary basis, the regular hourly rate of pay is computed by dividing the salary by the number of hours for which the salary is intended to compensate.

• **Salary—other than weekly**. When the salary covers a period longer than a workweek, such as a month, it must be reduced to its equivalent weekly wage by multiplying by 12 (months), and dividing by 52 (weeks). A semi-monthly salary is converted to its weekly equivalent by multiplying by 24 and dividing by 52. Overtime payment for salary paid other than weekly is determined the same as for weekly payment of salary.

• **Salary—workweek exceeding 40 hours.** A fixed salary for a regular workweek longer than 40 hours does not discharge the statutory obligation for nonexempt employees. For example, an employee may be hired to work a 44-hour workweek for a weekly salary of $350. In this case, the regular rate is obtained by dividing the $350 straight-time salary by 44 hours, which results

in a regular rate of pay of $7.95. The employee is due additional overtime computed by multiplying the four overtime hours by *one-half* the regular rate of pay at $3.98 per hour, and the employee is due an additional $15.92 above the $350 salary for each week, for a total of $365.92. If the employee worked more than 44 hours, the employee would be due additional pay for the hours worked over 44 computed by multiplying these additional overtime hours by *one and one-half* the regular rate of pay ($7.95), or $11.93 per hour for each hour worked in excess of 44 in any workweek.

• **Salary—fluctuating hours.** Salary for a fluctuating workweek occurs when an employee is employed on a fixed salary and it is clearly understood and agreed upon by both employer and employee that the hours will fluctuate from week to week and that the fixed salary constitutes straight-time pay for all hours of work, whether fewer or greater than forty hours per week. The regular rate is then obtained for each week by dividing the weekly salary by the number of hours worked each week. Since it was understood that all hours would constitute straight-time, all hours worked have already been paid at straight-time compensation; however, the employee is still entitled to receive an additional one-half hour's pay for each hour over 40 in the work week.

• **Employees working at two or more rates.** Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs. The employee is due the one-half rate for each overtime hour.

• **Commission payments (other than retail sales or service exception).** Commissions are payments for hours worked and must be included in the regular rate, regardless of whether the commission is the sole source of the employee's compensation or is paid in addition to a salary or hourly rate. It does not matter whether the commission earnings are computed daily, weekly or monthly.

When a commission is paid on a workweek basis, it is added to the employee's other earnings for that workweek and the total is divided by the number of hours worked in the workweek to obtain the employee's regular rate for the particular work week. The employee must then be paid extra compensation at the one-half rate for each overtime hour worked.

**Note: In all of the above examples, if the regular rate should fall below the applicable minimum wage, the employee must be compensated for regular hours at the minimum wage and for overtime based on one and one-half the minimum wage rate.**

**3. What is the definition of "workweek"?**

A workweek is a fixed and regularly recurring period of 168 hours during seven consecutive 24-hour periods. It may begin on any day of the week and any hour of the day. For purposes of overtime payment, each workweek stands alone; there can be no averaging of two or more workweeks. Once the beginning time of an employee's workweek is established it remains fixed, but may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements. In the absence of a workweek established by the employer, the workweek automatically defaults to the calendar week, Sunday through Saturday.

**Sample 3**

## Attendance Policy – Overtime Work Schedule

**POLICY** Any classification having a Fair Labor Standards Act (FLSA) Exempt position may not be paid overtime without the approval of Human Resources. HR will contact the employee's direct supervisor for approval. Such approval must be received before any overtime may be worked. The Company will not retroactively approve overtime.

**GENERAL INFORMATION**

**Contract Covered Employees**
For notification, scheduling, and distribution requirements see applicable collective bargaining agreement.

**Non-Contract Employees Covered**
To the extent that sufficient notice is available and the best interests of the Company are served, required overtime shall be distributed as equally as practical among the employees of the work unit at the same classification who normally perform the assigned duties. An employee who declines overtime work shall be counted as having worked in determining this "equal-share."

**Compensatory Time**
Payment for overtime worked may be made in compensatory time rather than in dollars if mutually agreed upon between the employee and his/her supervisor. For union employees, see applicable collective bargaining agreement.
**Note:** Employees are not eligible to receive overtime compensation in either cash or compensatory time credit until they have completed 40 (forty) hours in a week.

**HOURLY EMPLOYEES**

**Policy.** Prior management approval is required before a supervisor can authorize overtime either explicitly or implicitly.

**Work Scheduling.** The daily or biweekly work schedule of the hourly employee shall not be altered on a temporary basis to avoid premium overtime. The schedule shall be posted or the employee officially notified of his work schedule not less than 48 hours prior to the beginning of the new biweekly work period.

Supervisors should, when appropriate, adjust staff work schedules prior to the end of the week to avoid the accrual of more than 40 hours. Callback time can not be adjusted.

With the approval of the employer, the employee may, upon request, have the eight hour daily overtime provision waived and have a work schedule adjustment within the week in lieu of an accumulation of overtime. For union employees see the appropriate collective bargaining agreement.

**Overtime Provisions**

1. Overtime payments shall be made to hourly employees for time worked in excess of regularly scheduled hours in a day or in excess of 40 hours in a weekly work period.

2. Overtime pay is paid to eligible employees for time in pay status, excluding sick leave, in excess of 8 hours in a day and 40 hours in a week or as otherwise provided in the regulations. Holiday credit is to be counted as work time in computing weekly overtime only. If an employee works on a holiday, premium payment for the first 8 hours worked on the holiday is due and payable only when 40 hours in a week are exceeded. The employee has the option, with supervisory approval, to take another day in the same period as the holiday.

3. Part-time employees are eligible for premium overtime after completion of 8 hours in a day, not after completing their regular shift if less than 8 hours.

4. A day is defined as having 24 hours. A day begins at 12:01 a.m.

5. A biweekly work period consists of 80 hours of work, unless otherwise provided. A biweekly work period is considered complete if the actual time worked, plus any paid administrative, annual, deferred, sick, school, military or holiday leave, equals or exceeds 80 hours. The premium for overtime hours worked shall not be counted as work time.

**Rate/Method of Payment**

Payment will be made at one and one-half times the employee's regular rate. Payment shall be included in the biweekly payroll warrant.

**SALARIED EMPLOYEES**

**Policy.** Salaried employees are expected to do what is necessary to get a job done. They can be required to put in extra time without additional pay and also can be permitted time away from the job without use of leave credits or assessment of lost time. Records of specific hours are not normally maintained.

***Exception:*** In unusual circumstances, a more structured approach may be desirable. For example, an employee may be required to be present at a given time beyond the employee's normal work schedule in order to supervise the work of subordinates; a situation in which the employee has little or no control over the amount of time to be worked. If mutually agreed in advance between the employee and the supervisor, the employee may be authorized **"equivalent time."**

**Equivalent Time.** "Equivalent Time" hours are accumulated on an hour for hour basis. This is different than "Compensatory Time" which is an hour and a half of leave time for an hour worked. "Equivalent Time" hours may be recorded on informal records maintained by the employee and approved by the supervisor. These hours are not recorded on a timesheet for input into the payroll system. Such hours should normally be used within the pay period they were earned. These hours may not be paid for in cash at any time. In other situations where there will be extensive hours beyond the normal work week due to specific projects or activities, **overtime** payment authorization can be requested. Such a request must be justified and requested through an exception request process.

**PROCEDURE (FOR OBTAINING OVERTIME APPROVAL FOR EXEMPT EMPLOYEES)**

**Requester.** Send a memo to the DHS Human Resources Director requesting approval to pay overtime to an otherwise exempt individual. The memo should contain:

- Employee's Name(s)
- Employee's Identification Number(s)
- Employee's Position Code(s)
- Maximum number of overtime hours to be worked within a pay period(s)
- Date by which overtime will be completed
- Reason for the overtime, specifying the circumstances which make the overtime necessary.

**Sample 4**

Overtime

The Company strives to ensure that employees are generally able to complete their work tasks within the work week. In case of emergency or unforeseen circumstances, an employee may be requested to work over 40 hours in a work week. Any time scheduled over 40 hours must be pre-authorized by the supervisor.

It is not considered overtime if an employee works over 8 hours in one day. However, the total hours worked should not exceed 40 hours for that week (Sunday through Saturday).

Overtime will be paid at the rate of one and one-half times the regular rate of pay for any hours worked over 40 within one work week (Sunday through Saturday).

Each work week (Sunday through Saturday) is considered separately in computing overtime and all other pay.

Exempt and Non-Exempt Employees

- Employees who meet the criteria outlined in Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541 are considered Exempt employees
- Exempt staff is eligible for compensatory time

**Sample 5**

Full-time non-exempt (hourly) employees may occasionally be asked to work more than 40 hours in a given work week (Sunday through Saturday). The supervisor of the employee must give prior authorization for any overtime. Such overtime work, which is undertaken only when necessary, must be approved by the department or branch head. The employee will be compensated for overtime hours worked at the rate of one and one-half times the employee's base rate of pay. Working unapproved overtime may be cause for disciplinary action.

Please note that sick leave, vacation, personal, closed holiday, or leave without pay hours occurring in a 40+ hour work week, do *not* count as hours worked for the purposes of calculating overtime.

*Seventh Consecutive Day Rule*

If an employee works seven consecutive days in the same work week (Sunday through Saturday) and this results in the employee working more than 40 hours, the employee will be paid overtime for all hours worked on the seventh day.

Recordkeeping Requirements

The FLSA requires employers to keep records on wages, hours worked and other items, as specified in Department of Labor regulations (29 CFR Part 516). Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations.

Every covered employer must keep certain records for each non-exempt worker. The FLSA doesn't require a particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. The law requires this information to be accurate. With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following is a list of the 14 essential records that an employer must maintain:

1. Employee's full name and social security number
2. Address, including zip code
3. Birth date, if younger than 19
4. Gender and occupation
5. Time and day of week when the employee's workweek begins
6. Hours worked each day
7. Total hours worked each workweek
8. Basis on which employee's wages are paid (e.g., "$9 per hour," "$440 a week")
9. Regular hourly pay rate
10. Total daily or weekly straight-time earnings
11. Total overtime earnings for the workweek
12. All additions to or deductions from the employee's wages
13. Total wages paid each pay period
14. Date of payment and the pay period covered by the payment

Once all the required information above has been gathered, a common question that employers ask is, "How long do these records need to be retained?" The law requires that each employer preserve their payroll records, collective bargaining agreements, sales and purchase records for *at least three years*. Records on which wage computations are based should be retained for two years, such as time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages. These records must be open for inspection by representatives of the WHD, who may ask the employer to make extensions, computations, or transcriptions. The records may be kept at the place of employment or in a central records office.

A follow-up question that employers frequently ask is, "What about timekeeping?" The FLSA allows for some flexibility here, as employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

After the employer has gathered the essential records, placed them in a desirable format and employs a timekeeping method that ensures accuracy, it is important for them to consider how the FLSA defines the terms "workweek" and "hours worked" so that they pass any potential

audit from the WHD. As defined in the law, a "workweek" is a period of 168 hours during 7 consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day, as established by the employer. Generally, for purposes of minimum wage and overtime payment, each workweek stands alone, meaning that there can be no averaging of 2 or more workweeks. This is because employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis. Since covered employees must be paid for all hours worked in a workweek, the FLSA defines the term "hours worked" as "all of the time that an employee must be on duty and on the employer's premises or at any other prescribed place of work, from the beginning of the first principal activity of the work day to the end of the last principal work activity of the workday."

The same WHD representatives who inspect employers for the accuracy of their recordkeeping policies are the same inspectors who are able to cite employers for any violations of the FLSA's provisions. Employers who are mindful of the 14 essential records they must maintain and how to maintain them will not only stand the best chance of passing a WHD audit, but will also avoid any civil monetary penalties stemming from FLSA recordkeeping violations.

**Insignificant Periods of Time**

In recording working time under the act, infrequent and insignificant periods of time beyond the scheduled working hours, which cannot as a practical matter be precisely recorded for payroll purposes may be disregarded. The courts have held that such periods of time are de minimis (insignificant). This rule applies only where there are uncertain and indefinite periods of time involved, a few seconds or minutes in duration, and where the failure to count such time is justified by industrial realities. As noted below, an employer may not arbitrarily fail to count any part, however small, of working time that can be practically ascertained.

For example, after clocking in the employer assigns their employee to another job. He or she transported his or her tools to the new job area and then informed that the foreman that he or she was ill and went home without doing any additional work or clocking out. The time spent transporting the tools would be considered de minimis or insignificant because it was limited to this one time only.

The employer must count as hours worked any part, however small, of an employee's fixed or regular working time or identifiable periods of time he or she is regularly required to spend on duties assigned to him or her.

This policy is one that must be applied with common sense recognizing the practical realities of recording identifiable work time. Setting an artificial time limit is not sufficient. One must consider how frequently the activity is performed and whether the activity is actually part of the work the employee was hired to do.

**Use of Time Clocks**

Time clocks are not required under the FLSA. In those cases where time clocks are used, if an employee voluntarily comes in before his or her regular starting time or remains after quitting time, he or she does not have to be paid for such periods provided, of course, that the employee

does not do any work during this time. Early or late punching is not hours worked when no work is done.

Likewise, minor differences between the clock records and actual hours worked cannot ordinarily be avoided since all employees can not clock in or out at precisely the same time. Major discrepancies should be discouraged, however, since doubt is raised as to the accuracy of the record of hours actually worked.

In some industries, particularly where time clocks are used, there has been the practice for many years of recording the employee's starting and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, these arrangements average out so all of the time actually worked by the employee is properly counted and the employee is fully compensated for all the time actually worked. Such practices of recording working time are acceptable, provided they do not result, over a period of time, in failure to count as hours worked all the time the employees have actually worked.

**Exemption Determination**

Employers are also encouraged to keep records on exemption determination and status as well as any self audits that are conducted pertaining to exemption and overtime pay. Records may include job descriptions, salary tests, and pay rate determinations.

# Overtime Pay Self-Audit Checklist

The Fair Labor Standards Act requires that covered employees are paid at least one and a half times the minimum wage except where an employee is accurately classified as exempt. Utilize the following checklist when determining exemption status of employees to assist in compliance efforts with the FLSA.

*Employers should implement the following procedures for addressing overtime pay and classification of jobs within the business or organization:*

- ❑ Determine if your state's law, as it pertains to employee exemption to overtime pay follows the FLSA or has more stringent standards.
- ❑ Familiarize yourself with the rules for the salary tests and the job duties test.
- ❑ Conduct an audit of your employees' jobs utilizing the Job Duties Analysis form found in the documentation section of this manual.
- ❑ Determine which employees are eligible for exempt status through the review and updating of job descriptions with the help of those employees. Utilize the FairPay Overtime Rules Exemption Checklist found in the documentation section of this manual. Be sure to consider the following aspects:

    a. Purpose (i.e. contribute to the growth of the company)
    b. Essential Responsibilities
    c. Formal Management Responsibilities
    d. Routine Decision Making (site examples of the types of decisions made)
    e. Formal Training Required
    f. Formal Policy Setting Responsibilities
    g. Knowledge, Skill and Abilities
    h. Working Conditions

- ❑ Increase base salaries to meet the $455 per week requirement. For example, if you have an exempt manager working in a retail environment who currently makes $22,000 per year managing your store (including employees), under the regulations, that manager would be non-exempt if he does not meet the $455 per week salary level requirement. In order to maintain that manager's exempt status, his salary needs to be brought up to at least $23,660.
- ❑ Document your exempt employees file with (i) a Job Duties Analysis form that has the manager's sign off on all job descriptions within his or her area, and (ii) an FairPay Overtime Rules Exemption Checklist, which helps determine and document the satisfaction of the salary tests and job duties test signed off by an owner, officer or HR manager.
- ❑ Train the appropriate managers/supervisors on the regulations and implications.

Audit Conducted by _____ Date _____

Signature _____

# Child Labor

Overview

Every year, millions of teens work in part-time or summer jobs that provide great opportunities for learning important life skills and acquiring hands-on experience. Federal and State rules regarding young workers strike a balance between ensuring sufficient time for educational opportunities and allowing appropriate work experiences by limiting the hours teens can work and the types of jobs that teens can work.

The age of the young worker typically determines which child labor rules apply. In particular, the age of the young worker determines how many hours in a day or week, or what hours in the day they may work. In addition to restrictions on hours, the Secretary of Labor has found that certain jobs are too hazardous for anyone under 16 years of age to perform.

**Hours restrictions for non-agricultural employees**

14 years old is the minimum age for non-agricultural employment covered by the FLSA. The basic rules for when and where a youth may work are:

- Youth **18 years or older** may perform any job, whether hazardous or not, for unlimited hours.

- Youth **16 or 17 years old** may perform any non-hazardous job for unlimited hours.

- Youth **14 and 15 years old** may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs. They cannot work:

- More than 3 hours a day on school days, including Fridays;
- More than 18 hours per week in school weeks;
- More than 8 hours a day on non-school days;
- More than 40 hours per week when school is not in session.

Also, 14- and 15-year-olds may not work before 7:00 a.m., nor after 7:00 p.m., except from June 1 through Labor Day, when their permissible hours are extended to 9:00 p.m. Under a special provision, youth 14 and 15 years old who are enrolled in an approved Work Experience and Career Exploration Program may be employed for up to 23 hours during school weeks and 3 hours on school days (including during school hours).

**Hours restrictions on agricultural employees**

The hours restrictions are the same for all youth, migrant children as well as local resident children.

- Once a young person turns **16 years old**, he or she can work on any day, for any number of hours and in any job in agriculture.

- A youth **14 or 15 years old** can work in agriculture, on any farm, but only during hours when school is not in session and only in non-hazardous jobs.

- If the youth is **12 or 13 years of age**, he or she can only work in agriculture on a farm if a parent has given written permission, or a parent is working on the same farm. Again, the work can only be performed during hours when school is not in session and in non-hazardous jobs.

- If the youth is **younger than 12**, he or she can only work in agriculture on a farm if the farm is not required to pay the Federal minimum wage. Under the FLSA, "small" farms are exempt from the minimum wage requirements. "Small" farm means any farm that did not use more than 500 "man-days" of agricultural labor in any calendar quarter (3-month period) during the preceding calendar year. "Man-day" means any day during which an employee works at least one hour. If the farm is "small," workers under 12 years of age can be employed in non-hazardous jobs, but only during hours when school is not in session, and only with a parent's permission.

**Prohibited Occupations**

The child labor rules that prohibit employment in certain occupations or industries apply to workers under the age of 18. Because the rules, particularly the occupations declared to be too hazardous for youth, are quite different for agricultural and non-agricultural employment, they are presented separately.

The child labor rules that apply to non-agricultural employment depend on the age of the young worker and the kind of job to be performed. 14 years old is the minimum age for non-agricultural employment covered by the FLSA. In addition to restrictions on hours, the Secretary of Labor has found that certain jobs are too hazardous for anyone under 18 years of age to perform. There are additional restrictions on where and in what jobs 14-and 15-year-olds can work. These rules must be followed unless one of the FLSA's child labor exemptions apply.

- A youth **18 years or older** may perform any job, whether hazardous or not.

- A youth **16 or 17 years old** may perform any non-hazardous job. (See the list of hazardous occupations below.)

- A youth **14 and 15 years old** may **not** work in the manufacturing or mining industries, or in any hazardous job. (See the list of hazardous occupations below.)

The child labor rules also determine what types of jobs a youth may or may not perform.

A 14- or 15-year-old **may not work in:**

- Hazardous jobs identified by the Secretary of Labor;
- Manufacturing, processing, and mining occupations;
- Communications or public utilities jobs;
- Construction or repair jobs;
- Operating or assisting in operating power-driven machinery or hoisting apparatus other than typical office machines;

- Work as a ride attendant or ride operator at an amusement park or a “dispatcher” at the top of elevated water slides;
- Driving motor vehicles or helping a driver;
- Youth peddling, sign waving, or door-to-door sales;
- Poultry catching or cooping;
- Lifeguarding at a natural environment such as a lake, river, ocean beach, quarry, pond (youth must be at least 15 years of age and properly certified to be a lifeguard at a traditional swimming pool or water amusement park);
- Public messenger jobs;
- Transporting persons or property;
- Workrooms where products are manufactured, mined or processed;
- Warehousing and storage;
- Boiler or engine room work, whether in or about;
- Cooking, except with gas or electric grills that do not involve cooking over an open flame and with deep fat fryers that are equipped with and utilize devices that automatically lower and raise the baskets in and out of the hot grease or oil;
- Baking;
- Operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers, grinders, choppers or cutters and bakery mixers;
- Freezers or meat coolers work, except minors may occasionally enter a freezer for a short period of time to retrieve items;
- Loading or unloading goods on or off trucks, railcars or conveyors except in very limited circumstances;
- Meat processing and work in areas where meat is processed;
- Maintenance or repair of a building or its equipment;
- Outside window washing that involves working from window sills;
- All work involving the use of ladders, scaffolds, or similar equipment;
- Warehouse work, except office and clerical work.

**The jobs 14- and 15-year-old workers may legally perform are limited to:**

- Office and clerical work;
- Work of an intellectual or artistically creative nature;
- Bagging and carrying out customer's orders;
- Cashiering, selling, modeling, art work, advertising, window trimming, or comparative shopping;
- Pricing and tagging goods, assembling orders, packing, or shelving;
- Clean-up work and grounds maintenance—the young worker may use vacuums and floor waxers, but he or she may not use power-driven mowers, cutters, and trimmers;
- Work as a lifeguard at a traditional swimming pool or water amusement park if at least 15 years of age and properly certified;
- Kitchen and other work in preparing and serving food and drinks, but only limited cooking duties and no baking (see below);
- Cleaning fruits and vegetables;
- Cooking with gas or electric grills that do not involve cooking over an open flame and with deep fat fryers that are equipped with and utilize devices that automatically lower and raise the baskets in and out of the hot grease or oil;

- Clean cooking equipment, including the filtering, transporting and dispensing of oil and grease, but only when the surfaces of the equipment and liquids do not exceed 100° F;
- Pumping gas, cleaning and hand washing and polishing of cars and trucks (but the young worker may not repair cars, use garage lifting rack, or work in pits);
- Wrapping, weighing, pricing, stocking any goods as long as he or she doesn't work where meat is being prepared and doesn't work in freezers or meat coolers;
- Delivery work by foot, bicycle, or public transportation;
- Riding in the passenger compartment of a motor vehicle except when a significant reason for the minor being a passenger in the vehicle is for the purpose of performing work in connection with the transporting—or assisting in the transporting of—other persons or property;
- Loading and unloading onto and from motor vehicles, the hand tools and personal equipment the youth will use on the job site.

**Hazardous Occupations**

Eighteen is the minimum age for employment in non-agricultural occupations declared hazardous by the Secretary of Labor. The rules prohibiting working in hazardous occupations (HO) apply either on an industry basis, or on an occupational basis no matter what industry the job is in. Parents employing their own children are subject to these same rules. General exemptions apply to all of these occupations, while limited apprentice/student-learner exemptions apply to those occupations marked with an asterisk.

**These rules prohibit work in, or with the following:**

HO 1. Manufacturing and storing of explosives.
HO 2. Driving a motor vehicle and being an outside helper on a motor vehicle.
HO 3. Coal mining.
HO 4. Forest fire fighting and fire prevention, timber tract management, forestry services, logging, and saw mill occupations.
*HO 5. Power-driven woodworking machines.
HO 6. Exposure to radioactive substances.
HO 7. Power-driven hoisting apparatus.
*HO 8. Power-driven metal-forming, punching, and shearing machines.
HO 9. Mining, other than coal mining.
HO 10. Meat and poultry packing or processing (including the use of power-driven meat slicing machines).
HO 11. Power-driven bakery machines.
*HO 12. Balers, compactors, and paper-products machines.
HO 13. Manufacturing brick, tile, and related products.
*HO 14. Power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs.
HO 15. Wrecking, demolition, and shipbreaking operations.
*HO 16. Roofing operations and all work on or about a roof.
*HO 17. Excavation operations.

The **child labor rules that apply to agricultural employment** depend on the age of the young worker and the kind of job to be performed. The rules are the same for all youth, migrant children as well as local resident children. In addition to restrictions on hours, the Secretary of Labor has found that certain jobs in agriculture are too hazardous for anyone under 16 to perform.

- Once a young person turns **16 years old**, he or she can do any job in agriculture.
- A youth **14 or 15 years old** can work in agriculture, on any farm, but only in non-hazardous jobs.
- A youth **12 or 13 years of age** can only work in agriculture on a farm if a parent has given written permission or if a parent is working on the same farm as his or her child, and only in non-hazardous jobs.
- If the youth is **younger than 12**, he or she can only work in agriculture on a farm if the farm is not required to pay the Federal minimum wage. Under the FLSA, "small" farms are exempt from the minimum wage requirements. "Small" farm means any farm that did not use more than 500 "man-days" of agricultural labor in any calendar quarter (3-month period) during the preceding calendar year. "Man-day" means any day during which an employee works at least one hour. If the farm is "small," workers under 12 years of age can only be employed with a parent's permission and only in non-hazardous jobs.

The Secretary of Labor has found that the following agricultural occupations are hazardous for youths under 16 years of age. No youth under 16 years of age may be employed at any time in any of these hazardous occupations in agriculture (HO/A) unless specifically exempt. Exemptions (*) will apply to HO/A #1 through #6 under limited circumstances.

*HO/A #1 Operating a tractor of over 20 PTO (Power-Take-Off) horsepower, or connecting or disconnecting implements or parts to such a tractor.

*HO/A #2 Operating or helping to operate any of the following machines (operating includes starting, stopping, adjusting, or feeding the machine or any other activity involving physical contact with the machine):

(a) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;
(b) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a non-gravity-type self-unloading wagon or trailer; or,
(c) Power post-hole digger, power post driver, or non-walking-type rotary tiller.

*HO/A #3 Operating, or assisting to operate any of the following machines (operating includes starting, stopping, adjusting, or feeding the machine, or any other activity involving physical contact with the machine):

(a) Trencher or earthmoving equipment;

(b) Fork lift;
(c) Potato combine; or,
(d) Power-driven circular, band, or chain saw.

*HO/A #4 Working on a farm in a yard, pen, or stall occupied by a:

(a) Bull, boar, or stud horse maintained for breeding purposes; or
(b) Sow with suckling pigs, or cow with newborn calf with umbilical cord present.

*HO/A #5 Loading, unloading, felling, bucking, or skidding timber with a butt (large end) diameter of more than 6 inches.

*HO/A #6 Working from a ladder or scaffold at a height of over 20 feet (working includes painting, repairing, or building structures, pruning trees, picking fruit, etc.).

HO/A #7 Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.

HO/A #8 Working inside:

(a) A fruit, forage (feed), or grain storage structure designed to retain an oxygen deficient or toxic atmosphere - for example, a silo where fruit is left to ferment;
(b) An upright silo within 2 weeks after silage (fodder) has been added or when a top unloading device is in operating position;
(c) A manure pit; or,
(d) A horizontal silo while operating a tractor for packing purposes.

HO/A #9 Handling or applying agricultural chemicals if the chemicals are classified under the Federal Insecticide, Fungicide and Rodenticide Act as Toxicity Category I -- identified by the word "Danger" and/or "Poison" with skull and crossbones; or Toxicity Category II -- identified by the word "Warning" on the label. (Handling includes cleaning or decontaminating equipment, disposing of or returning empty containers, or serving as a flagman for aircraft applying agricultural chemicals.)

HO/A #10 Handling or using a blasting agent including, but not limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps and primer cord.

HO/A #11 Transporting, transferring, moving, or applying anhydrous ammonia (dry fertilizer).

**Exemptions from Child Labor Rules in Non-Agriculture**

*Complete Child Labor Exemptions*

The Fair Labor Standards Act provides for certain exemptions. Youth younger than 16 years of age working in nonagricultural employment in a business solely owned by their parents or by persons standing in place of their parents, may work any time of day and for any number of

hours. However, parents are prohibited from employing their child in manufacturing or mining or in any of the occupations declared hazardous by the Secretary of Labor.

In addition, the child labor rules do **not** apply to:

- Youth employed as actors or performers in motion pictures, theatrical, radio, or television productions;
- Youth engaged in the delivery of newspapers to consumers; and
- Youth working at home in the making of wreaths composed of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens).

*Partial Exemptions from Non-Agricultural Hazardous Order Prohibitions*

Limited exemptions from some of the hazardous occupations rules allow 16- and 17- year-old apprentices and student-learners to perform otherwise prohibited work (hazardous jobs) under certain conditions. The hazardous occupations in which youth may work if the those conditions are met are: HO #5 Power-driven woodworking machines; HO #8 Power-driven metal-forming, punching and shearing machines; HO #10 Meat and poultry slaughtering, packing, or processing (including the use of power-driven meat slicing machines); HO #12 Balers, compactors, and power-driven paper-product machines, including scrap paper balers and paper box compactors; HO #14 Power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs; HO #16 Roofing operations and all work on or about a roof; and HO #17 Excavation operations.

There are no similar exemptions from the hazardous occupations rules for youth younger than 16. Fourteen and 15-year-olds, however, may be employed in approved school-administered and school-supervised Work Experience and Career Exploration Programs (WECEP) or Work Study Programs (WSP). Such programs allow variations in the rules and permit employment during school hours. WECEP participants may also be employed in otherwise prohibited occupations for which an official exception has been authorized by the Department of Labor.

FLSA Section 13(c)(7) creates a limited exemption from the youth employment provisions for certain minors 14 through 17 years of age who are excused from compulsory school attendance beyond the eighth grade. This exemption allows eligible youth to be employed inside and outside of businesses that use machinery to process wood products (such as sawmills, furniture manufacturers, garden shed and gazebo manufacturers, cabinet makers and pallet shops) with some restrictions, but does not allow them to operate or assist in the operation of power-driven woodworking machinery.

Note: All states mandatory school attendance laws, and determine the minimum age at which youth may operate motor vehicles. You may want to check on your state rules after you have completed this section.

**Exemptions from Child Labor Rules in Agriculture**

*Complete Child Labor Exemptions*

Youth of any age may be employed at any time, in any occupation in agriculture on a farm owned or operated by their parent or person standing in place of their parent.

***Exemptions from Hazardous Order Prohibitions***

With the exception of the parental exemption explained above, there are only a few exemptions from the hazardous occupations in agriculture and they apply only to 14- and 15-year-olds. The circumstances where 14- and 15-year-olds may be employed in certain hazardous occupations are:

- Student-learners in a bona fide vocational agriculture program may work in Ag H.O. # 1 through #6, under a written agreement which provides that:

1. Work is incidental to the training;
2. Work shall be intermittent, for short periods of time, and under the direct and close supervision of a qualified, experienced person;
3. School shall give safety instruction coordinated by the employer with on-the-job training; and
4. A schedule of organized and progressive work processes to be performed on the job has been prepared.

- 14- or 15-year-olds who hold certificates of completion of the 4-H Federal Extension Training Programs for tractor operation and/or machine operation may work in occupations listed in HO/A# 1 and #2 for which they have been trained, provided that the youth:

1. Has been instructed by his or her employer on safe and proper operation of the specific equipment to be used; and
2. Is continuously and closely supervised by the employer where feasible; or, where not feasible, is checked for safety by the employer at least at mid-morning, noon, and mid-afternoon.

Employers must keep copies of written agreements and certificates under these programs.

**Certificates of Age**

The federal government does not require work permits or proof-of-age certificates for a minor to be employed. Many states, however, do require them for workers of certain ages. In addition to state labor departments, school guidance counselors might know if permits or proof-of-age certificates are required in that particular state. The Department of Labor will issue age certificates if the minor employee's state does not issue them, or if the minor is requested by his or her employer to provide one. However, the vast majority of age certificates are issued by states.

The purpose of these certificates is to protect the employer from prosecution for employing an under-aged worker. The possession of an age certificate constitutes a good faith effort to comply with minimum age requirements.

Some states require work permits or age certificates for young workers. In fact, most of the age certificates issued to young workers are issued by states. The fines for violation of this requirement can result in a monetary penalty for the employer. Consult your state department of labor for specific information on this issue.

**Wages**

While the FLSA requires payment of at least the federal minimum wage to covered, nonexempt employees, a special minimum wage of $4.25 per hour applies to young workers under the age of 20 during their first 90 consecutive days of employment with an employer.

Other programs allowing for payment of less than the full Federal minimum wage that may be applicable to young workers are: full-time students and student-learners employed pursuant to sub-minimum wage certificates. (Please note that these programs are not limited to the employment of workers under 18 years of age.)

*Youth Minimum Wage Program*

A minimum wage of not less than $4.25 may be paid to employees under the age of 20 for their first 90 days of employment with any employer as long as their work does not displace other workers. After 90 days of employment, or when the worker reaches age 20 (whichever comes first), the worker must receive at least the federal minimum wage.

*Full-Time Student Program*

This program is for full-time students employed in retail or service stores, agriculture, or colleges and universities. The employer that hires students can obtain a certificate from the Department of Labor which allows the student to be paid not less than 85 percent of the minimum wage. The certificate limits the hours that the student may work to 8 hours in a day and no more than 20 hours a week when school is in session and 40 hours when school is out, and requires the employer to follow all child labor laws. Once students graduate or leave school for good, they must be paid at least the federal minimum wage.

*Student-Learner Program*

This program is for high school students at least 16 years old who are enrolled in vocational education (shop courses). The employer that hires the student can obtain a certificate from the Department of Labor which allows the student to be paid not less than 75 percent of the federal minimum wage for as long as the student is enrolled in the vocational education program.

## Enforcement

The Department of Labor (DOL) encourages, and in fact relies on employers to voluntarily comply with the FLSA, including the child labor rules. However, the FLSA does provide several enforcement tools. DOL uses these tools, when necessary, to compel compliance with the FLSA and its child labor regulations.

The FLSA gives DOL the authority to investigate possible violations of its rules, including the power to examine an employer's records and to interview employees to determine if the employer is in compliance with the Act. When violations are found, an investigator will explain the violations to the employer and seek agreement for future compliance. But DOL also may take any of the following actions:

- Assess civil money penalties.
- Seek an injunction in the Federal Courts.
- Initiate criminal action in the Federal Courts.
- Take a "hot goods" action in the Federal Courts.

*Civil Money Penalties*

Employers may be subject to a civil money penalty up to $11,000 for each employee who is the subject of a child labor violation. In addition, the FLSA permits an assessment of up to $50,000 for each violation that causes the death or serious injury of a minor and such assessments may be doubled, up to $100,000, when the violations are determined to be willful or repeated.

If a penalty is assessed, the employer has the right, within 15 days, to file an exception in writing with the Wage and Hour Division official who issued the assessment. When an exception is filed, the matter is referred for a hearing before an administrative law judge.

*Injunction in the Federal Courts*

Section 17 of the FLSA authorizes U.S. District Courts to stop violations of the FLSA's requirements, such as the employment of children in violation of the hazardous occupations orders or payment of the minimum wage and overtime. Department of Labor attorneys, as representatives of the Secretary, are authorized by the FLSA to bring actions in the Federal Courts to enjoin such violations. Thus, the Courts can require employers to comply with the child labor regulations.

*Criminal Action in the Federal Courts*

In the case of a willful violation of the child labor rules, the FLSA provides for a fine up to $10,000. For a second offense committed after the conviction for a prior offense, a person can also be imprisoned for not more than 6 months.

*"Hot Goods" Action in the Federal Courts*

Section 12(a) of the FLSA provides that no producer, manufacturer, or dealer shall ship or deliver for shipment in commerce, any goods produced in an establishment in the U.S. in or about which oppressive child labor was employed within 30 days prior to the removal of the goods. This provision is in addition to Section 12(c), which prohibits employment of oppressive child labor in the production of goods for commerce. Oppressive child labor occurs when the child labor rules are violated.

Under these provisions, legal action could be taken to prevent an employer from shipping his or her product, if child labor violations have occurred within the past 30 days.

*Records as a Defense*

Employers may protect themselves from unintentional violation of the age-related child labor rules by keeping on file a state-issued employment or age certificate for each youth employed to show that he or she meets the minimum age requirement. Most certificates issued under state laws are acceptable. The federal government no longer issues such certificates.

Recent Cases and Settlements

The following cases exemplify circumstances in which the action was taken against employers who violated regulations pertaining to child labor:

**Phoenix McDonald's fined for child labor violations**

According to the U.S. Department of Labor, a McDonald's franchise owner in was ordered to pay nearly $30,500 in back wages and child labor penalties because he failed to pay overtime and broke child labor laws.

The department reported that the owner of a McDonald's in Phoenix, paid $20,502.05 in back wages to five workers, two of whom were still employees at the time of the settlement. The workers were not compensated for overtime hours, federal officials said. The company also paid $9,990 in penalties for violating restrictions on the hours minors can work and tasks they can perform.

Joanna P. Hawkins, deputy regional director at the U.S. Department of Labor offices in Philadelphia, said an investigation found 14- and 15-year-old employees working longer than three hours on a school day and working late into the evening. “The cutoff for those workers is 7 p.m. during the school year and 9 p.m. during the summer,” Hawkins said.

**DOL finds child labor and minimum wage law violations at Vineland, NJ, vegetable farm**

The U.S. Department of Labor’s Wage and Hour Division cited Robert Ferrari Inc. for child labor and minimum wage violations of the Fair Labor Standards Act (FLSA).

The investigation, conducted as part of the division’s 2009 child labor initiative, determined that the farm employed two individuals under the age of 12. A $2,282 penalty was assessed against the farm for child labor violations.

Investigators also found that two minors were not paid at least the federal minimum wage, which resulted in a total of $4,888 due to the workers.

“The Labor Department is committed to ensuring that minors are protected on the job,” said Pat Reilly, director of the Wage and Hour Division in Southern New Jersey. “Because of the special dangers posed to children by agricultural employment, it is vital that agricultural employers know and comply with all rules provided under federal law.”

Regarding agricultural employment, under federal law, individuals ages 16 and above may work in any farm job at any time, and youths of any age may work at any time in any job on a farm owned or operated by their parents. Individuals ages 14 and 15 may work outside school hours in jobs not declared hazardous by the Secretary of Labor. There are special requirements for employing youth under age 14.

**DOL fines 3 major movie theatre chains more than $277,000 for child labor violations**

The U.S. Department of Labor assessed a total of $277,475 in civil money penalties against three movie theatre companies, Marcus Theatre Corp., Regal Cinemas Inc. and Wehrenberg Inc., for allowing dozens of teens to perform hazardous jobs and work longer hours than allowed by the youth employment provisions of the FLSA.

The Labor Department's Wage and Hour Division, through a strategic enforcement initiative aimed at curbing violations in an industry found to have a high rate of non-compliance with child labor laws, discovered approximately 160 minors were being required to perform hazardous jobs — such as operating paper balers and trash compactors, operating motor vehicles, using power driven mixers and baking — in theatres owned by the three chains. Marcus Theatre Corp. also allowed youth to work beyond permitted hours. The 27 theatres where the minors were employed are in nine states: California, Illinois, Indiana, Minnesota, Missouri, Nebraska, Ohio, South Carolina and Wisconsin.

"The penalties imposed as a result of these violations should serve as a wake-up call to movie theatre owners and other employers," said Secretary of Labor Hilda L. Solis. "Businesses that employ minors are legally and ethically obligated to abide by child labor standards and ensure youth are protected on the job."

In addition to paying civil money penalties, the companies agreed to implement comprehensive internal compliance and training programs. They also will assist the Wage and Hour Division in promoting industry-wide compliance. For example, Regal Cinemas is showing a child labor public service announcement on workplace safety at all 458 of its digital cinema locations in 39 states.

Wage and Hour Division investigators determined that Knoxville, Tenn.-based Regal Cinemas Inc., which operates Regal Cinemas, Edwards Theatres and United Artist Theatres, violated child labor laws by employing minors to load and operate trash compactors. Regal Cinemas paid $158,400 in civil money penalties.

Investigators determined that Milwaukee, Wis.-based Marcus Theatres Corp. violated child labor laws by employing minors to load and operate trash compactors, operate motor vehicles and operate a dough mixer. The company also employed minors under the age of 16 to perform baking and allowed them to work beyond hours permitted under the FLSA. Marcus Theatres paid $93,995 in civil money penalties.

Investigators also determined that St. Louis, Mo.-based Wehrenberg Inc. allowed minors to load and operate trash compactors, and to operate motor vehicles. The company paid $25,080 in penalties.

Pertinent DOL/WHD Fact Sheets

**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(July 2010)

# Fact Sheet #2A: Child Labor Rules for Employing Youth in Restaurants and Quick-Service Establishments Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the federal child labor provisions to restaurants and quick-service establishments that employ workers who are less than 18 years of age. For detailed information about the federal youth provisions, please read Regulations, 29 CFR Part 570.

The Department of Labor is committed to helping young workers find positive, appropriate, and safe employment experiences. The child labor provisions of the FLSA were enacted to ensure that when young people work, the work does not jeopardize their health, well-being, or educational opportunities. Working youth are generally entitled to the same minimum wage and overtime protections as older adults. For information about the minimum wage and overtime e requirements in the restaurant and quick-service industries, please see Fact Sheet # 2 in this series, *Restaurants and Quick Service Establishment under the Fair Labor Standards Act*.

**Minimum Age Standards for Employment**

The FLSA and the child labor regulations, issued at 29 CFR Part 570, establish both hours and occupational standards for youth. Youth of any age are generally permitted to work for businesses entirely owned by their parents, except those under 16 may not be employed in mining or manufacturing and no one under 18 may be employed in any occupation the Secretary of Labor has declared to be hazardous.

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| **18 Years of Age** | Once a youth reaches 18 years of age, he or she is no longer subject to the federal child labor provisions. |
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| **16 & 17 Years of Age** | Sixteen- and 17-year-olds may be employed for unlimited hours in any occupation other than those declared hazardous by the Secretary of Labor. Examples of equipment declared hazardous in food service establishments include:<br><br>**Power-driven meat processing machines** (meat slicers, meat saws, patty forming machines, meat grinders, and meat choppers), commercial mixers and certain power-driven bakery machines. Employees under 18 years of age are not permitted to operate, feed, set-up, adjust, repair, or clean any of these machines or their disassembled parts. |

<table>
<tr><td>16 & 17 Years of Age Continued</td><td colspan="2">Motor Vehicles. Generally, no employee under 18 years of age may drive on the job or serve as an outside helper on a motor vehicle on a public road, but 17-year-olds who meet certain specific requirements may drive automobiles and trucks that do not exceed 6,000 pounds gross vehicle weight for limited amounts of time as part of their job. Such minors are, however, prohibited from making time sensitive deliveries (such as pizza deliveries or other trips where time is of the essence) and from driving at night. (See Fact Sheet # 34: Child Labor Provisions and the Driving of Automobiles and Trucks under the Fair Labor Standard Act.)<br><br>Balers and Compactors. Minors under 18 years of age may not load, operate, or unload balers or compactors. Sixteen- and 17-year-olds may load, but not operate or unload, certain scrap paper balers and paper box compactors under certain specific circumstances. (See Fact Sheet #57: in this series, Hazardous Occupations Order No. 12. Hazardous Occupations Order No. 12, Rules for Employing Youth and the Loading, Operating, and Loading of Power-Driven Balers and Compactors under the Fair Labor Standards Act (FLSA)).</td></tr>
<tr><td>14 & 15 Years of Age</td><td colspan="2">Fourteen- and 15- year-olds may be employed in restaurants and quick-service establishments outside school hours in a variety of jobs for limited periods of time and under specified conditions. Child Labor Regulations No. 3, 29 C.F.R. 570, Subpart C limits both the time of day and number of hours this age group may be employed as well as the types of jobs they may perform.</td></tr>
<tr><td></td><td>Hours and times of day standards for the employment of 14- and 15-year-olds:</td><td>Occupation standards for the employment of 14- and 15-year-olds:</td></tr>
<tr><td></td><td>• outside school hours;<br>• no more than 3 hours on a school day, including Fridays;<br>• no more than 8 hours on a nonschool day;<br>• no more than 18 hours during a week when school is in session;<br>• no more than 40 hours during a week when school is not in session;<br>• between 7 a.m. and 7 p.m. - except between June 1 and Labor day when the evening hour</td><td>• They may perform cashiering, table service and "busing," and clean up work, including the use of vacuum cleaners and floor waxers.<br>• They may perform kitchen work and other work involved in preparing food and beverages, including the operation of devices used in such work, such as dish-washers, toasters, milk shake blenders, warming lamps, and coffee grinders.<br>• They may perform limited cooking duties involving electric or gas grills that do not entail cooking over an open flame. They may also cook with deep fat fryers that are equipped with and utilize devices that automatically raise and lower the "baskets" into and out of the hot grease of oil. They may not operate NEICO broilers, rotisseries, pressure cookers, fryolators, high-speed ovens, or rapid toasters.</td></tr>
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| **14 & 15 Years of Age Continued** | is extended to 9 p.m.<br><br>School hours are determined by the local public school in the area the minor is residing while employed. | • They may not perform any baking activities.<br>• They may dispense food from cafeteria lines and steam tables and heat food in microwave ovens that do not have the capacity to heat food over 140º F.<br>• They may not operate, clean, set up, adjust, repair or oil power driven machines including food slicers, grinders, processors, or mixers.<br>• They may clean kitchen surfaces and non-power-driven equipment, and filter, transport and dispose of cooking oil, but only when the temperature of the surface and oils do not exceed 100º F.<br>• They may not operate power-driven lawn mowers or cutters, or load or unload goods to or from trucks or conveyors.<br>• They may not work in freezers or meat coolers, but they may occasionally enter a freezer momentarily to retrieve items.<br>• They are prohibited from working in any of the Hazardous Orders (discussed above for 16- and 17-year-olds). |
| | | |
| **Under 14 Years of Age** | Children under 14 years of age may not be employed in non-agricultural occupations covered by the FLSA, including food service establishments. Permissible employment for such children is limited to work that is exempt from the FLSA (such as delivering newspapers to the consumer and acting). Children may also perform work not covered by the FLSA such as completing minor chores around private homes or casual baby-sitting. | |

**Work Experience and Career Exploration Program (WECEP)**

WECEP is a program designed to provide a carefully planned work experience and career exploration program for 14- and 15-year-old youths who can benefit from a career oriented educational program designed to meet the participants' needs, interests and abilities. The program is aimed at helping youths to become reoriented and motivated toward education and to prepare them for the world of work.

State Departments of Education are granted approval to operate a WECEP by the Administrator of the Wage and Hour Division for a 2-year period. Certain provisions of child labor provisions are modified for 14- and 15-year-old participants during the school term.

Students enrolled in an authorized WECEP:

- My work during school hours.
- May work up to 3 hours on a school day; and as many as 23 hours in a school week.
- May work in some occupations that would otherwise be prohibited under a variance issued by the Administrator, but they may not work in manufacturing, mining or any of the 17 Hazardous Occupations.

Individual employers may partner with participating local school districts in those states authorized to operate WECEPs.

**Work-Study Program (WSP)**

WSP is a program designed to help academically oriented students enrolled in a college preparatory high school curriculum pursue their college diplomas. Some of the hours standards provisions of Child Labor Regulation No. 3 are varied for certain 14- and 15-year-old students participating in a Department of Labor approved and school-supervised and administered WSP. Participating students must be enrolled in a college preparatory curriculum and identified by authoritative personnel of the school as being able to benefit from the WSP.

Students enrolled in an authorized WSP:

- May work no more than 18 hours in any one week when school is in session, a portion of which may be during school hours, in accordance with the following formula that is based upon a continuous four-week cycle:
    - In three of the four weeks, the participant is permitted to work during school hours on only one day per week, and for no more than for eight hours on that day.
    - During the remaining week of the four-week cycle, such minor is permitted to work during school hours on no more than two days, and for no more than for eight hours on each of those two days.
    - The employment of such minors would still be subject to the remaining time of day and number of hours standards contained Child Labor Regulation No. 3 and discussed earlier in this fact sheet.
- Are held to all the occupation standards established by Child Labor Regulation No. 3.

**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet #32: Youth Minimum Wage - Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping and youth employment standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments. The FLSA requires payment of the Federal minimum wage to all covered and nonexempt employees. Overtime pay at a rate of not less than one and one-half times the regular rate of pay is required for all hours worked over 40 in a workweek.

The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than $4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage. This fact sheet provides general answers to questions that may arise about the youth wage provisions.

**What is the youth minimum wage?**
The youth minimum wage is authorized by Section 6(g) of the FLSA, as amended by the 1996 FLSA Amendments. The law allows employers to pay employees under 20 years of age a lower wage for a limited period -- 90 calendar days, **not** work days -- after they are first employed. Any wage rate above $4.25 an hour may be paid to eligible workers during this 90-day period.

**Who may be paid the youth minimum wage?**
Only employees under 20 years old may be paid the youth minimum wage and only during the first 90 consecutive calendar days after initial employment by their employer.

**Which employers may use the youth minimum wage?**
All employers covered by the FLSA may pay eligible employees the youth minimum wage, unless prohibited by State or local law. Where a State or local law requires payment of a minimum wage higher than $4.25 an hour and makes no exception for employees under age 20, the higher State or local minimum wage standard would apply.

**When does the 90-day eligibility period start and end?**
The eligibility period runs for 90 consecutive calendar days *beginning with the first day of work for an employer*. It does not matter when the job offer was made or accepted (or when the employee was considered "hired"). The 90-day period starts with (and includes) the first day of work for the employer. The 90-day period is counted as consecutive days on the calendar, not days of work. It does not matter how many days during this period the youth actually performs any work.

**What happens if an employee reaches 20 years of age before he or she has worked the full 90-day eligibility period for the employer? Can the employee still be paid the youth wage for the full 90-day period?**
No. Eligible employees may be paid the youth wage up to the day before their 20th birthday. On and after their 20th birthday, their pay must be raised to no less than the applicable minimum wage.

**What impact does a break in service have on counting the first "90 consecutive calendar days" after initial employment by an employer?**
A break in service does not affect the calculation of the 90-day period of eligibility. In other words, the 90-calendar-day period continues to run even if the employee comes off the payroll during the 90 days. For example, if a student initially works for an employer over a 60-calendar-day period in the summer and then quits to return to school, the 90-day eligibility period ends for this employee with this employer 30 days after he/she quits (i.e., 90 consecutive calendar days after initial employment). If this student were to return later to work again for this same employer, the period of eligibility for the youth wage will have already expired.

**May an employee be paid the youth wage by more than one employer?**
Yes. A youth under 20 may be paid the youth wage for up to 90 consecutive calendar days after initial employment with **any** employer, **not** just the **first** employer. While an employee is "initially employed" only **once** by any employer, an employee may be "initially employed" by more than one employer. The fact that an eligible youth may be employed simultaneously by more than one employer (unrelated to each other) does not impact either employer's right to pay the youth wage.

**Does an employer have to provide any training to an employee paid at the youth wage?**
No. Employers are **not** required to meet any training requirements in order to pay an eligible employee the youth wage.

**The FLSA also authorizes other subminimum wage rates for certain categories of workers, such as full-time students, learners, and student-learners. Can these other special minimum wages combine with the youth minimum wage rate to allow a minimum wage lower than $4.25 an hour for young workers?**
No. The special lower minimum wages authorized by Section 14 of the FLSA are based on the regular minimum wage.

**Does the youth wage go up when the FLSA minimum wage goes up?**
No. An eligible youth may still be paid not less than $4.25 an hour during the 90 calendar days after initial employment by his/her employer.

**May an employer terminate an employee in order to hire someone at the youth wage?**
No. The law contains specific protections for employees that make it illegal for employers to terminate employees to hire someone at the youth wage. Employers may not take any action to displace any employee (including partial displacements such as a reduction in hours, wages, or employment benefits) for the purpose of employing someone at the youth wage. Violation of this anti-displacement provision is considered to be a violation of the FLSA's Section 15(a)(3) anti-discrimination provision.

**May an employer hire only employees under 20 years of age at the youth wage and employ them only for 90 days each?**
No. Such a practice would be illegal. It would be a violation of the anti-displacement provisions if an employer employed individuals at the youth wage for the 90-day eligibility period and then terminated their employment in order to hire other employees at the youth wage.

**What does "displacement" mean?**
"Displacement" includes discharge, or any reduction in an employee's hours, wages, or employment benefits.

**If an employer violates the anti-displacement provision, what are the employer's obligations to employees who are illegally displaced?**
Employees who are illegally displaced are entitled to "make whole" relief, such as reinstatement to their previous or an equivalent position of employment, payment of lost wages or benefits, etc. For example, if an employee whose health insurance premium had been paid -- fully or partially -- by the employer is terminated in

order for the employer to hire another employee at the youth wage, and the displaced employee is required to pay the entire health insurance premium after being terminated to avoid a lapse in coverage, the employer could be required to reinstate the employee, compensate the employee for the lost wages, and reimburse the employee for the cost of health insurance premiums paid.

**Does a violation of the anti-displacement provision make the employer ineligible to pay the youth wage to employees who are otherwise eligible**?
No. A "displacement" violation does not cause an employer to lose eligibility to pay the youth wage to eligible employees.

**Does the law provide a termination date for the FLSA's youth wage?**
No.

**Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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TTY: 1-866-487-9243
**Contact Us**

**U.S. Department of Labor**
Wage and Hour Division


# Fact Sheet #43: Youth Employment Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations

This Fact Sheet provides general information about the Federal youth employment provisions applicable to nonagricultural occupations. Different standards apply to farm work.

The Department of Labor is committed to helping young workers find those positive and early employment experiences that can be so important to their development, but the work must be safe. The youth employment provisions of the FLSA were enacted to ensure that when young people work, the work does not jeopardize their health, well-being or educational opportunities. Employers are subject to the youth employment provisions generally under the same coverage criteria as established for the other provisions of the FLSA.

It is an unfortunate fact that children do get injured, even killed, in the workplace. The National Institute for Occupational Safety and Health estimates that 160,000 American children suffer occupational injuries every year—and 54,800 of these injuries are serious enough to warrant emergency room treatment.

Both Federal and State laws govern the employment of young workers and when both are applicable, the law with the stricter standard must be obeyed.

The Federal youth employment provisions **do not**:

- require minors to obtain "working papers" or "work permits," though many States do;
- restrict the number of hours or times of day that workers 16 years of age and older may be employed, though many States do;
- apply where no FLSA employment relationship exists;
- regulate or require such things as breaks, meal periods, or fringe benefits;
- regulate such issues as discrimination, harassment, verbal or physical abuse, or morality, though other Federal and State laws may.

## Minimum Age Standards For Employment

The FLSA and the youth employment regulations issued at 29 CFR, Part 570, establish both hours and occupational standards for youth. Children of any age are generally permitted to work for businesses entirely owned by their parents, except those under age

16 may not be employed in mining or manufacturing and no one under 18 may be employed in any occupation the Secretary of Labor has declared to be hazardous.

**18** Once a youth reaches 18 years of age, he or she is no longer subject to the Federal youth employment provisions.

**16** Basic minimum age for employment. 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** Young persons 14 and 15 years of age 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.

**Under 14** Children under 14 years of age may not be employed in non-agricultural occupations covered by the FLSA. Permissible employment for such children is limited to work that is exempt from the FLSA (such as delivering newspapers to the consumer and acting). Children may also perform work not covered by the FLSA such as completing minor chores around private homes or casual baby-sitting.

## OCCUPATIONS BANNED FOR ALL MINORS UNDER THE AGE OF 18

**The Hazardous Occupations Orders (HO)**

The FLSA establishes an 18-year minimum age for those nonagricultural occupations that the Secretary of Labor finds and declares to be particularly hazardous for 16- and 17-year-old minors, or detrimental to their health or well-being. In addition, Child Labor Regulation No. 3 also bans 14- and 15-year-olds from performing any work proscribed by the HOs. There are currently 17 HOs which include a partial or total ban on the occupations or industries they cover.

**HO 1. Manufacturing or storing explosives**—bans minors working where explosives are manufactured or stored, but permits work in retail stores selling ammunition, gun shops, trap and skeet ranges, and police stations.

**HO 2. Driving a motor vehicle or work as an outside helper on motor vehicles**—bans operating motor vehicles on public roads and working as outside helpers on motor vehicles, except 17-year-olds may drive cars or small trucks during daylight hours for limited times and under strictly limited circumstances (*see* Fact Sheet #34 in this series for information about on-the-job driving).

**HO 3. Coal mining**—bans most jobs in coal mining.

**HO 4. Occupations in forest fire fighting, forest fire prevention, timber tract, forestry service, and occupations in logging and sawmilling operations**—bans most jobs in: forest fire fighting; forest fire prevention that entails extinguishing an actual fire; timber tract management; forestry services; logging; and sawmills.

**HO 5. Power-driven woodworking machines**—bans the operation of most power-driven woodworking machines, including chain saws, nailing machines, and sanders.*

**HO 6. Exposure to radioactive substances and ionizing radiation**—bans employment of minors where they are exposed to radioactive materials.

**HO 7. Power-driven hoisting apparatus**—bans operating, riding on, and assisting in the operation of most power-driven hoisting apparatus such as forklifts, non-automatic elevators, Bobcat loaders, skid steer loaders, backhoes, manlifts, scissor lifts, cherry pickers, work-assist platforms, boom trucks, and cranes. Does not apply to chair-lifts at ski resorts or electric and pneumatic lifts used to raise cars in garages and gasoline service stations.

**HO 8. Power-driven metal-forming, punching and shearing machines**—bans the operation of certain power-driven metal-working machines but permits the use of most machine tools.*

**HO 9. Mining, other than coal**—bans most jobs in mining at metal mines, quarries, aggregate mines, and other mining sites including underground work in mines, work in or about open cut mines, open quarries, and sand and gravel operations.

**HO 10. Power-driven meat-processing machines, slaughtering and meat packing plants**—bans the operation of power-driven meat processing machines, such as meat slicers, saws and meat choppers, wherever used (including restaurants and delicatessens). Also prohibits minors from cleaning such equipment, including the hand-washing of the disassembled machine parts. This ban also includes the use of this machinery on items other than meat, such as cheese and vegetables. HO 10 also bans most jobs in meat and poultry slaughtering, processing, rendering, and packing establishments.*

**HO 11. Power-driven bakery machines**—bans the operation of power-driven bakery machines such as vertical dough and batter mixers; dough rollers, rounders, dividers, and sheeters; and cookie or cracker machines. Permits 16- and 17-year-olds to operate certain lightweight, small, portable, counter-top mixers and certain pizza dough rollers under certain conditions.

**HO 12. Balers, compactors, and power-driven paper-products machines**—bans the operation of all compactors and balers and certain power-driven paper products machines such as platen-type printing presses and envelope die cutting presses. Sixteen- and 17-year-olds may load, but not operate or unload, certain scrap paper balers and paper box compactors under very specific guidelines (*see* Fact Sheet #57). *

**HO 13. Manufacturing of brick, tile and related products**—bans most jobs in the manufacture of brick, tile and similar products.

**HO 14. Power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs**—bans the operation of, and working as a helper on, the named types of power-driven equipment, no matter what kind of items are being cut by the equipment.*

**HO 15. Wrecking, demolition, and ship-breaking operations**—bans most jobs in wrecking, demolition, and ship-breaking operations, but does not apply to remodeling or repair work which is not extensive.

**HO 16. Roofing operations and work performed on or about a roof**—bans most jobs in roofing operations, including work performed on the ground and removal of the old roof, and all work on or about a roof* (*see* Fact Sheet #74)

**HO 17. Trenching and excavation operations**—bans most jobs in trenching and excavation work, including working in a trench more than four feet deep.*

*The regulations provide a limited exemption from HOs 5, 8, 10, 12, 14, 16 and 17 for apprentices and student-learners who are at least 16 years of age and enrolled in approved programs.

The term "operation" as used in HOs 5, 8, 10, 11, 12 and 14 generally includes the tasks of setting up, adjusting, repairing, oiling or cleaning the equipment.

**HOURS OF WORK AND PERMITTED OCCUPATIONS FOR 14- AND 15-YEAR-OLDS IN NONAGRICULTURAL EMPLOYMENT**

The Federal youth employment provisions limit the times of day, number of hours, and industries and occupations in which 14- and 15-year-olds may be employed.

***Child Labor Regulation No. 3, 29 C.F.R.§ 570.35, limits the hours and the times of day that 14- and 15-year-olds may work to:***

- outside school hours;
- no more than 3 hours on a school day , including Fridays;
- no more than 8 hours on a nonschool day;
- no more than 18 hours during a week when school is in session;
- no more than 40 hours during a week when school is not in session;
- between 7 a.m. and 7 p.m.—except between June 1 and Labor day when the evening hour is extended to 9 p.m.

***Child Labor Regulation No. 3, 29 C.F.R. §§ 570.33 lists some of the jobs that 14- and 15-year-olds may not hold. The following is just a sample of prohibited occupations:***

- They are prohibited from working in any of the Hazardous Orders or in most occupations involving transportation, construction, warehousing, communications and public utilities.
- They may **not** work in processing, mining, in any workroom or workplace where goods are manufactured or processed, in freezers, or in meat coolers.
- They may not operate or tend any power-driven machinery, except office machines.
- They may not perform any baking operations.
- They may **not** be employed in youth peddling, sign waving, or door-to-door sales activities.
- They may **not** work from ladders, scaffolds, or their substitutes.
- They may **not** be employed to catch or coop poultry.

***Child Labor Regulation No. 3, 29 C.F.R. §§ 570.34 lists those jobs that 14- and 15-year-olds may hold. WHAT IS NOT PERMITTED IS PROHIBITED:***

- They may work in most office jobs and retail and food service establishments.

- They may be employed in occupations such as bagging groceries, office work, stocking shelves, and cashiering.
- They may work in intellectual or artistically creative occupations such as teacher, musician, artist, and performer.
- They may perform limited kitchen work involving the preparation of food and beverages.
- They may perform only limited cooking duties (*see* Fact Sheet #58). They may cook over electric or gas grills that do not involve cooking over an open flame and they may cook with deep fryers that are equipped with and utilize a device that automatically lowers the baskets into the hot oil or grease and automatically raised the baskets from the hot oil or grease.
- They may clean cooking equipment and surfaces (not otherwise prohibited), and filter, transport, and dispose of grease as long as the temperature of the surfaces, containers, and grease do not exceed 100°F.
- Properly certified 15-year-olds may work as lifeguards and swimming instructors at traditional swimming pools and water amusement parks.

**Special Provisions Permitting the Employment of 15-year-olds, but not 14-year-olds, as Lifeguards at Traditional Swimming Pools and Water Amusement Parks**

Regulations, 29 C.F.R. § 570.34(l) permits the employment of 15-year-olds as lifeguards at traditional swimming pools and water amusement parks when such youth have been trained and certified by the American Red Cross, or a similar certifying organization, in aquatics and water safety. The federal child labor provisions require that a 15-year-old must acquire additional certification if he or she is to be employed as a swim instructor.

A traditional swimming pool means a water-tight structure of concrete, masonry, or other approved materials located either indoors or outdoors, used for bathing or swimming and filled with a filtered and disinfected water supply, together with buildings, appurtenances and equipment used in connection therewith.

A water amusement park means an establishment that not only encompasses the features of a traditional swimming pool, but may also include such additional attractions as wave pools; lazy rivers; specialized activities areas such as baby pools, water falls, and sprinklers; and elevated water slides. Properly certified 15-year-olds would be permitted to be employed as lifeguards at most of these water park features, but not as attendants or dispatchers at the top of elevated water slides.

Not included in the definition of a traditional swimming pool or a water amusement park would be such natural environment swimming facilities as rivers, streams, lakes, reservoirs, wharfs, piers, canals, or oceanside beaches. Lifeguards must be at least 16 years of age to be employed at such natural environment facilities.

For more information about these provisions, please read Fact Sheet # 60: *Application of the Federal Youth Employment Provisions of the Fair Labor Standards Act (FLSA) to the Employment of Lifeguards.*

**Special Provisions Permitting the Employment of Certain Minors in Places of Business that Use Machinery to Process Wood Products**

Section 13(c)(7) of the FLSA permits the employment of certain minors between the ages of 14 and 18 inside and outside of places of businesses where machinery is used to process wood products. This exemption applies only to a minor who is:

1. exempt from compulsory school attendance beyond the eighth grade either by statute or judicial order, **and**,
2. is supervised in the work place by an adult relative or adult member of the same religious sect or division as the minor.

Although a minor meeting these requirements may be employed inside and outside of places of businesses that use machinery to process wood products—activities normally prohibited by Child Labor Regulation No. 3 and HO 4—the minor is still prohibited from operating, or assisting to operate, any power-driven woodworking machines. This prohibition includes the starting and stopping of the machines and the feeding of materials into the machines as well as the off-bearing of materials from the machines. Such minors are also prohibited from cleaning, oiling, setting-up, adjusting and maintaining the machines. In addition, such minors must be protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation. The minor is also required to use personal protective equipment to prevent exposure to excessive levels of noise and sawdust (*see* Fact Sheet No. 55 in this series for more information about this exemption).

**Work Experience and Career Exploration Program (WECEP)**

This program is designed to provide a carefully planned work experience and career exploration program for 14- and 15-year-old youths who can benefit from a career-oriented educational program designed to meet the participants' needs, interests and abilities. The program is aimed at helping youths to become reoriented and motivated toward education and to prepare them for the world of work.

State Departments of Education are granted approval to operate a WECEP by the Administrator of the Wage and Hour Division for a 2-year period. Certain provisions of CL Reg. 3 are modified for 14- and 15-year-old participants during the school term.

- They may work during school hours.
- They may work up to 3 hours on a school day; and as many as 23 hours in a school week.
- They also may work in some occupations that would otherwise be prohibited under a variance issued by the Administrator, but they may not work in manufacturing, mining or any of the 17 Hazardous Occupations.

**Work-Study Programs (WSP)**

Some of the provisions of Child Labor Regulation No. 3 are varied for 14- and 15-year-old participants in approved school-administered WSPs. A WSP participant must be 14 or 15 years of age, enrolled in a college preparatory curriculum, and be identified by authoritative personnel from his or her school as being able to benefit from a work-study program.

Employment of participants in WSPs shall be confined to not more than 18 hours in any one week when school is in session, a portion of which may be during school hours in accordance with the following formula that is based upon a continuous four-week cycle:

- In three of the four weeks, the participant is permitted to work during school hours on only one day per week, and for no more than for eight hours on that day.
- During the remaining week of the four-week cycle, the participant is permitted to work during school hours on no more than two days, and for no more than for eight hours on each of those two days.

The employment of WSP participants is still subject to the time of day and number of hours standards contained in 29 C.F.R. §§ 570.35(a)(2), (a)(3), (a)(4), and (a)(6). The superintendent of the public or private school system wishing to supervise and administer a WSP as discussed in this section must first receive permission form the Administrator of the Wage and Hour Division.

**Enforcement and Penalties**

Investigators of the Wage and Hour Division who are stationed across the U.S. enforce the youth employment provisions of the FLSA. As the Secretary of Labor's authorized representatives, they have the authority to conduct investigations and gather data on wages, hours, and other employment conditions or practices, in order to determine compliance with all the provisions of the FLSA.

Violators of the youth employment provisions may be subject to a civil money penalty of up to $11,000 for each minor employed in violation. Penalties for violations that cause the death or serious injury of a minor may be increased to as much as $50,000 and those penalties may be doubled (up to $100,000) when the violations are determined to be willful or repeated.

The FLSA prohibits the shipment in interstate commerce of goods that were produced in violation of the Act's minimum wage, overtime, or youth employment provisions. The FLSA authorizes the Department of Labor to obtain injunctions to prohibit the movement of such **"hot goods."** The FLSA also authorizes the Department to obtain injunctions against violators of the youth employment provisions to compel their compliance with the law. Further violations could result in sanctions against such persons for contempt of court. Willful youth employment violators may face criminal prosecution and be fined up to **$10,000**. Under current law, a second conviction may result in imprisonment.

**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(July 2010)

# Fact Sheet #52—The Employment of Youth in the Health Care Industry

The Fair Labor Standards Act (FLSA) requires covered employers to pay employees at least the applicable federal minimum wage for all hours worked and overtime pay for hours worked over 40 in a work week. The FLSA also set standards under which youth under the age of 18 may be employed. The FLSA is administered by the Wage and Hour Division of the U.S. Department of Labor.

Hospitals and other institutions "primarily engaged in the care of the sick, the aged, or the mentally ill" are covered employers under Section 3(s)(1)(B) of the FLSA. Thus, hospitals, residential care establishments, skilled nursing facilities, nursing facilities, assisted living facilities, residential care facilities and intermediate care facilities for mental retardation and developmentally disabled must comply with the minimum wage, overtime and child labor requirements of the FLSA.

## Summary

This fact sheet provides guidance regarding common child labor violations found by the Wage and Hour Division during investigations in the health care industry. Most violations of the FLSA's child labor provisions in the long-term care industry occur in the dietary and housekeeping departments. Minors must be at least 14 years old to be employed in non-agricultural workplaces. There are limitations on the number of hours and times of day that 14- and 15-year-olds may work as well as the types of jobs they may perform. The FLSA does not restrict the hours that minors 16 years of age or older may work. However, minors aged 16 and 17 may not perform tasks that are deemed too hazardous for them to perform.

## Hours of Work for 14- and 15-Year-Olds

The federal child labor provisions require that when 14-and 15-year-olds work, they must be employed:

- Outside school hours
- Not more than 40 hours during non-school weeks
- Not more than 18 hours per week when school is in session
- Not more than 8 hours in any one day when school is not in session
- Not more than 3 hours in any one day, including Fridays, when school is in session
- Between 7 a.m. and 7 p.m. except during the summer (June 1 through Labor Day) when the evening hours are extended to 9 p.m.

***Example #1:***

At an assisted living facility, the chef's 15-year-old son works in the dietary department from 4 p.m. to 7 p.m. Occasionally he helps clean up with his father's shift and works until 8 p.m. Is this allowed under Federal regulations? No. Fourteen- and 15-year-olds may not work outside the hours standards even if working with a parent or guardian. A young worker would be exempt from the hours standards only if he or she were employed in a business solely owned by the parents.

***Example #2:***

May a 15-year-old begin working at 6 a.m. during the summer or on a weekend?

No, 14- and 15-year-olds may not work before 7 a.m. or after 7 p.m. except from June 1 through Labor Day when the evening hours are extended to 9 p.m.

**Job Restrictions for 14- and 15-Year-Olds**

Youth 14- and 15-years of age may perform a variety of jobs such as office work; sales work; run errands and make deliveries by foot, bicycle and public transportation. They may also perform a variety of food service jobs, including waiting on tables, busing tables, dispensing food from a steam table or chafing dish, washing dishes, and preparing salads and other food. Cooking is prohibited for 14- and 15-year-olds except cooking with gas or electric grills (where the cooking does not involve cooking over an open flame) and except cooking with deep fat fryers that are equipped with and utilize automatic devices which lower and raise baskets into and out of the oil or grease. Fourteen- and 15-year-olds may not perform any baking activities or operate "Neico" broilers, pressurized fryers, high-speed ovens, rapid toasters, or rotisseries.

Fourteen- and 15-year-olds may clean cooking equipment, including the filtering, transporting, and disposal of oil or grease, but only when the temperature of the equipment surfaces and the oil or grease do not exceed 100º F. Fourteen- and 15-year-olds may not operate or tend most power-driven machinery, perform work in freezers or meat coolers, or work in any occupation declared hazardous by the Secretary of Labor.

***Example #3:***

A 14-year-old works as a dishwasher in the kitchen at a residential care facility. Sometimes she is called upon to do take pies out of the oven when the cook is doing inventory. Is this in accordance with the child labor laws?

No. Removing items from an oven is a "baking" activity and no one under 16 years of age may perform such tasks.

***Example #4:***

A 15-year-old helps out at a residential care facility on weekends. She mows the lawn and trims the bushes using a gas-powered lawn mower and electric clippers. Is this permissible?

No. Fourteen- and 15-year-olds may not operate power driven machinery other than office machines and certain food preparation machines.

*Example #5:*

A 15-year-old works in the dietary department at a skilled nursing facility. When there are snowstorms, he helps out with snow blowing and snow shoveling. Is this allowed?

No, the youth is too young to legally operate a power-driven snow blower on the job. Snow shoveling, however, would be allowed.

**Hazardous Occupation Orders**

Seventeen (17) hazardous non-farm jobs are out of bounds for youth under the age of 18. In the health care industry, the most common hazardous occupations violations occur in food service and housekeeping jobs.

Hazardous Order No. 10 prohibits minors under 18 from operating, cleaning, setting up, disassembling and reassembling, repairing and oiling power-driven meat processing machines—including meat slicers—regardless of the material being processed.

Hazardous Order No. 11 prohibits minors under 18 may form setting up, operating, assisting other to operate, cleaning, oiling, adjusting or repairing power driven bakery machines. This includes horizontal and vertical dough mixers; batter mixers; bread dividing, rounding or molding machines; dough breaks; dough sheeters; cookie and cracker machines; and cake cutting band saws.

Hazardous Order No. 7 prohibits minors under 18 from operating or assisting in the operation of most power-driven hoists, including those designed to lift and move patients.

Hazardous Order No. 12 prohibits minors under 18 from loading, operating, and unloading balers and compactors used in waste disposal and recycling. There is a limited exemption that allows 16- and 17-year-olds to load, but not operate or unload, certain scrap paper balers and paper box compactors under very strict conditions. Please read Fact Sheet No. 57 of this series for information about that exemption.

***Example #6:***

A food service director at an assisted living facility has 17-year-olds working in the kitchen. The director prohibits them from operating the power driven meat slicing machine. They are, however, allowed to dismantle, clean the parts and reassemble the parts. Does this comply with the FLSA?

No, youth under age 18 may not disassemble or reassemble such machines. They may not hand wash the individual parts of a machine even when someone over 18 years of age has disassembled the machine. Sixteen- and 17-year-olds may, however, run a rack of such disassembled parts through a commercial dishwasher as long as the minors do not touch or handle the parts..

***Example # 7:***

A facility treating individuals with developmental disabilities employs workers to bake breads and rolls. This requires the operation of power driven dough mixers. The 16- and 17-year-olds operate these machines. Does this violate the FLSA?

Yes, this is a violation of the FLSA child labor rules. Under HO 11, workers must be at least 18 years of age to operate power-driven dough mixers.

***Example # 7:***

A large nursing home employs two 16-year-olds to collect trash and waste paper throughout the facility and load it into the large commercial trash compactor located on the loading dock. The firm rents the compactor from a waste management firm. The minors also routinely operate the compactor by turning the key and pressing the "on" button. Does this violate the FLSA?

Yes, this is a violation of the FLSA. HO 12 prohibits youth under the age of 18 from loading, operating. or unloading compactors and balers. Although, under a limited exemption, 16- and 17-year-olds may load (but not operate or unload) certain paper box compactors and scrap paper balers, they may do so only under some very stringent conditions. One such condition is that each machine must be equipped with an on-off switch incorporating a key-lock or other system and the control of the system must be maintained in the custody of employees who are at least 18 years of age. In this example both the loading and operating of the compactor by these minors violated the FLSA.

***Example #8:***

A 17-year-old orderly at a private hospital assists the nurse in moving a patient from her bed to a chair using a power-driven patient hoist/lift. Does this violate the provisions of the FLSA?

Yes; this is a violation of the FLSA child labor rules. HO 7 prohibits workers under 18 years of age from operating or assisting in the operation of most hoists. Prior to July 19, 2010, the child labor provisions included an exemption that permitted 16- and 17-year-olds to operate electric- and air-powered hoists of less than one ton capacity, but this exemption has been repealed.

Sample Policy Statements

The following sample policy statement can be utilized as a starting point for an employer to easily customize as part of their employee manual for their company. The policy can be **customized** by adding information specific to the company. Suggestions and examples are included to give additional information and help determine the company's policies.

**Sample 1**

The Company including its subsidiary companies (the Company) will comply with all relevant and applicable state and Federal labor regulations, treaties, conventions and principles relating to the protection, welfare and health and safety of children. Furthermore, the Company will not employ any person deemed by state or Federal laws, conventions or regulations to be a child in any capacity in any industrial operation under its control.

As a good corporate citizen, the Company is committed to the principles of protecting children from child labor exploitation. The Company believes that their future development and that of the communities and countries in which they live is best served through education not child labor.

This is a commitment the Company seeks to apply throughout the supply chain, from production to the distribution and sale of manufactured products, as well as to the recovery and disposal of waste materials.

The Company acknowledges that it is sometimes customary in some industries for children to play a part in the day-to-day work, partly to learn essential craft skills for ensuring the long-term sustainability of an industry. Nevertheless, the Company aims to apply this commitment and principles to contracted supplies by education through its field extension service, seeking to ensure that:

a) The welfare and health & safety of children are paramount at all times.
b) Any form of labor, undertaken by children for the development of craft skills, does not conflict with or impede their proper educational development including school attendance.
c) No work activity that could be considered to put children at risk is undertaken by children, e.g., handling mechanical equipment or agro-chemicals, etc.

The Company has overall responsibility for this policy. Each operating and end-market company is responsible for introducing procedures and programs to implement this policy and to proactively demonstrate the Company's commitment to corporate social responsibility in this regard.

This policy statement applies to the Company and all its subsidiaries and will be reviewed periodically by the Board. It will also be circulated to associate companies, who will be encouraged to adopt the policy as best practice.

Recordkeeping Requirements

The FLSA requires employers to keep records on wages, hours worked and other items, as specified in Department of Labor regulations (29 CFR Part 516). Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations.

Every covered employer must keep certain records for each non-exempt worker. The FLSA doesn't require a particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. The law requires this information to be accurate. With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following is a list of the 14 essential records that an employer must maintain:

1. Employee's full name and social security number
2. Address, including zip code
3. Birth date, if younger than 19
4. Gender and occupation
5. Time and day of week when the employee's workweek begins
6. Hours worked each day
7. Total hours worked each workweek
8. Basis on which employee's wages are paid (e.g., "$9 per hour", "$440 a week")
9. Regular hourly pay rate
10. Total daily or weekly straight-time earnings
11. Total overtime earnings for the workweek
12. All additions to or deductions from the employee's wages
13. Total wages paid each pay period
14. Date of payment and the pay period covered by the payment

Once all the required information above has been gathered, a common question that employers ask is, "How long do these records need to be retained?" The law requires that each employer preserve their payroll records, collective bargaining agreements, sales and purchase records for *at least three years*. Records on which wage computations are based should be retained for two years, such as time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages. These records must be open for inspection by representatives of the WHD, who may ask the employer to make extensions, computations, or transcriptions. The records may be kept at the place of employment or in a central records office.

A follow-up question that employers frequently ask is, "What about timekeeping?" The FLSA allows for some flexibility here, as employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

After the employer has gathered the essential records, placed them in a desirable format and employs a timekeeping method that ensures accuracy, it is important for them to consider how the FLSA defines the terms "workweek" and "hours worked" so that they pass any potential

audit from the WHD. As defined in the law, a "workweek" is a period of 168 hours during 7 consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day, as established by the employer. Generally, for purposes of minimum wage and overtime payment, each workweek stands alone, meaning that there can be no averaging of 2 or more workweeks. This is because employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis. Since covered employees must be paid for all hours worked in a workweek, the FLSA defines the term "hours worked" as "all of the time that an employee must be on duty and on the employer's premises or at any other prescribed place of work, from the beginning of the first principal activity of the work day to the end of the last principal work activity of the workday."

The same WHD representatives who inspect employers for the accuracy of their recordkeeping policies are the same inspectors who are able to cite employers for any violations of the FLSA's provisions. Employers who are mindful of the 14 essential records they must maintain and how to maintain them will not only stand the best chance of passing a WHD audit, but will also avoid any civil monetary penalties stemming from FLSA recordkeeping violations.

**Insignificant Periods of Time**

In recording working time under the act, infrequent and insignificant periods of time beyond the scheduled working hours, which cannot as a practical matter be precisely recorded for payroll purposes may be disregarded. The courts have held that such periods of time are de minimis (insignificant). This rule applies only where there are uncertain and indefinite periods of time involved, a few seconds or minutes in duration, and where the failure to count such time is justified by industrial realities. As noted below, an employer may not arbitrarily fail to count any part, however small, of working time that can be practically ascertained.

For example, after clocking in the employer assigns their employee to another job. He or she transported his or her tools to the new job area and then informed that the foreman that he or she was ill and went home without doing any additional work or clocking out. The time spent transporting the tools would be considered de minimis or insignificant because it was limited to this one time only.

The employer must count as hours worked any part, however small, of an employee's fixed or regular working time or identifiable periods of time he or she is regularly required to spend on duties assigned to him or her.

This policy is one that must be applied with common sense recognizing the practical realities of recording identifiable work time. Setting an artificial time limit is not sufficient. One must consider how frequently the activity is performed and whether the activity is actually part of the work the employee was hired to do.

**Use of Time Clocks**

Time clocks are not required under the FLSA. In those cases where time clocks are used, if an employee voluntarily comes in before his or her regular starting time or remains after quitting time, he or she does not have to be paid for such periods provided, of course, that the employee

does not do any work during this time. Early or late punching is not hours worked when no work is done.

Likewise, minor differences between the clock records and actual hours worked cannot ordinarily be avoided since all employees can not clock in or out at precisely the same time. Major discrepancies should be discouraged, however, since doubt is raised as to the accuracy of the record of hours actually worked.

In some industries, particularly where time clocks are used, there has been the practice for many years of recording the employee's starting and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, these arrangements average out so all of the time actually worked by the employee is properly counted and the employee is fully compensated for all the time actually worked. Such practices of recording working time are acceptable, provided they do not result, over a period of time, in failure to count as hours worked all the time the employees have actually worked.

**Certificates of Age**

Where it is required, employers may need to keep records on certificates of age for minor employees. The federal government does not require work permits or proof-of-age certificates for a minor to be employed. Many states, however, do require them for workers of certain ages. In addition to state labor departments, school guidance counselors might know if permits or proof-of-age certificates are required in that particular state. The Department of Labor will issue age certificates if the minor employee's state does not issue them, or if the minor is requested by his or her employer to provide one. However, the vast majority of age certificates are issued by states.

The purpose of these certificates is to protect the employer from prosecution for employing an under-aged worker. The possession of an age certificate constitutes a good faith effort to comply with minimum age requirements.

Some states require work permits or age certificates for young workers. In fact, most of the age certificates issued to young workers are issued by states. The fines for violation of this requirement can result in a monetary penalty for the employer. Consult your state department of labor for specific information on this issue.

# Child Labor Self-Audit Checklist

The Fair Labor Standards Act (FLSA) regulates the hours and work that may be conducted by employees age 17 and younger. When employing minors, utilize the following checklist to assist in compliance efforts with the FLSA.

❑ Employees, ages 15 and younger, only work the hours allowed under the FLSA:

- Not more than 3 hours a day on school days, including Fridays;
- Not more than 18 hours per week in school weeks;
- Not more than 8 hours a day on non-school days;
- Not more than 40 hours per week when school is not in session;
- Not before 7:00 a.m., nor after 7:00 p.m., except from June 1 through Labor Day, when their permissible hours are extended to 9:00 p.m.

❑ Employees ages 17 and younger do not work in any occupations deemed "hazardous" by the FLSA.

❑ Where required by state law, certificates of age have been acquired for all minor employees.

❑ Employees, under the age of 20, are paid at least the minimum wage except where a special wage of $4.25 applies during the first consecutive 90 days of employment.

❑ Certificates have been obtained from the Department of Labor for all student employees enrolled in a student-learner program and earning 75% of the Federal minimum wage.

❑ Outside contractors, utilized by the Company, follow child labor regulations as outlined under the FLSA.

Audit Conducted by _____ Date _____

Signature _____

# Breaks, Meals & Special Employment

Overview

Federal law does not require lunch or coffee breaks. However, when employers do offer short breaks (usually lasting about 5 to 20 minutes), federal law considers the breaks as compensable work hours that should be included in the sum of hours worked during the work week and considered in determining if overtime was worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished.

**Meal Periods**

Bona fide meal periods (typically lasting at least 30 minutes), serve a different purpose than coffee or snack breaks and, thus, are not work time and are not compensable.

To be a non-compensable meal period, an employee needs to be completely relieved from their duties during that time. An employee is not completely relieved from duty if they are required to perform any duties or do any work while eating. This includes inactive or active work.

For example:

- An office employee who is required to eat at his or her desk is not relieved from duty if he or she is required to answer the telephone or respond to customers, even if no calls are actually received.

- A factory worker who is required to watch his or her machine while eating is working and not completely relieved from duty.

It is not necessary that an employee be permitted to leave the premises if he or she is completely relieved from duty during the meal period.

Meal periods of less than 30 minutes in which the employee is completely relieved for purposes of eating a meal may be bona fide, and thus not hours worked, when special conditions are present. The conditions reviewed to make this determination, which should be considered in context on a case-by-case basis, include the following:

- Work-related interruptions to the meal period are sporadic and minimal
- Employees have sufficient time to eat a regular meal. Periods of less than 20 minutes should be given special scrutiny to ensure that the time is sufficient to eat a regular meal under the circumstances presented.
- The period involved is not just a short break for snacks and/or coffee but is a break to eat a full meal, comes at a time or day or shift when meals are generally consumed, and occurs with no more frequency than is customary.
- There is an agreement between the employee and employer that a period of less than 30 minutes is sufficient to eat a regular meal.

- Applicable State or local laws do not require lunch periods in excess of the period indicated.

**Breaks**

Even though they are not required by the FLSA, if an employer permits employees to take breaks, they must be counted as hours worked. **Breaks from 5 to 20 minutes must be counted as hours worked.** This includes any short periods the employee is allowed to spend away from the work site for any reason.

For example:

- smoke breaks,
- restroom breaks,
- personal telephone calls or visits, or
- to get coffee or soft drinks, etc.

Note, however, that an employer need not count unauthorized extensions of authorized breaks as hours worked when the employer has expressly and unambiguously advised the employee that the break may only last for a specific length of time and that any extension of the break is contrary to the employer's rules and will be punished.

**Nursing Mothers**

The Patient Protection and Affordable Care Act ("PPACA"), signed into law on March 23, 2010 (P.L. 111-148), amended Section 7 of the FLSA, to provide a break time requirement for nursing mothers.

Employers are required to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express the milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

The FLSA requirement of break time for nursing mothers to express breast milk does not preempt State laws that provide greater protections to employees (for example, providing compensated break time, providing break time for exempt employees, or providing break time beyond 1 year after the child's birth).

Employers are required to provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

A bathroom, even if private, is not a permissible location under the Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother's use, it must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a space for expressing milk or made

available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from any intrusion from co-workers and the public.

Only employees who are not exempt from the FLSA's overtime pay requirements are entitled to breaks to express milk. While employers are not required under the FLSA to provide breaks to nursing mothers who are exempt from the overtime pay requirements of Section 7, they may be obligated to provide such breaks under State laws.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer's business. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

Under the FLSA employers are not required to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time. In addition, the FLSA's general requirement that the employee must be completely relieved from duty or else the time must be compensated as work time applies.

**Employees with Disabilities**

Section 14(c) of the FLSA authorizes employers, after receiving a certificate from the Wage and Hour Division, to pay special minimum wages – wages less than the federal minimum wage – to workers who have disabilities for the work being performed. The certificate also allows the payment of wages that are less than the prevailing wage to workers who have disabilities for the work being performed on contracts subject to the McNamara-O'Hara Service Contract Act (SCA) and the Walsh-Healey Public Contracts Act (PCA).

The term *worker with a disability* is defined in FLSA section 14(c)(1) as an individual "whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury." Some examples of disabilities that may affect a worker's earning or productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism, drug addiction and age. Age may be considered to be an impairment to earning or productive capacity only when the individual is at least 70 years old and age impairs his or her productivity for the work to be performed. The fact that a worker is over 70 years of age does not, in and of itself, constitute a disability under section 14(c). Vocational, social, cultural, or educational disabilities, standing alone, are not disabilities under section 14(c). Examples include chronic unemployment, receipt of welfare benefits, nonattendance at school, juvenile delinquency, and correctional parole or probation. However, these conditions could meet the section 14(c) definition of a disability if they exist in conjunction with some other physical/mental deficiency or injury.

A special minimum wage may be paid only when an individual has a disability for the work he or she is employed to perform. While a disability may affect a worker's earning or productive capacity for one type of work, the same disability may have no impact on his or her ability to perform another kind of work. Only when a disability impairs the individual for the job to be performed may an employer pay a special minimum wage.

*Certificates*

Employers must obtain an authorizing certificate from the Wage and Hour Division prior to paying special minimum wages to employees who have disabilities for the work being performed. Employers shall submit a properly completed application and the required supporting documentation (For more information on where to find Form WH-226-MIS see the Additional Resources section of this manual).

These certificates authorize the employment of workers with disabilities in accordance with the requirements of regulations 29 CFR Part 525. They remain in effect for the period indicated on the certificate or until withdrawn or revoked, *provided* the employer maintains compliance with all applicable provisions of the FLSA. Certificates covering employees of work centers and patient workers normally remain in effect for two years. Certificates covering workers with disabilities placed in competitive employment situations or School Work Exploration Programs (SWEPs) are issued annually.

The certification process is one tool the Department uses to help employers achieve and maintain compliance with section 14(c). But because the process constitutes a review of only a limited amount of employer-provided information, the certificate is not a statement of compliance. Issuance of a certificate will not convey a good faith defense to employers should violations of the FLSA, SCA, or PCA occur, as certificates may be revoked retroactively as of the date of the violation(s). In the past, some employers have mistakenly thought that because WH had issued them a certificate, WH was acknowledging their compliance. In order to avoid future misunderstandings, certificates are now issued with such a disclaimer.

*Prevailing Wage*

Determining the prevailing wage is the first step toward establishing the correct commensurate wage. The prevailing wage is the wage paid to experienced workers who do not have disabilities performing essentially the same type of work in the same geographic location. An employer must be able to demonstrate that the prevailing wage rate used to determine a commensurate wage was objectively determined. Normally, prevailing wage rates are based on the results of surveys conducted by the employer holding the section 14(c) certificate.

The prevailing wage survey must be conducted prior to paying a special minimum wage. It then must be reviewed and updated at least once a year - more frequently when a change in the prevailing wage has most likely occurred (such as when the FLSA Minimum Wage has increased). Prevailing wage surveys are conducted in the same manner regardless of the employer's method of payments - piece rate, hourly wage, salary, etc.

*Note: Prior to the effective dates of the last two increases in the Minimum Wage, the Child Labor and Special Employment Team, NO/OEP has reminded all certificate holders, by letter, of the requirements of reviewing and adjusting prevailing wage rates.*

The prevailing wage is not an entry-level wage or a training wage, but the wage rate paid experienced employees after completion of any training or probationary periods. An experienced worker is one who has learned the basic elements or requirements of the work to be performed, ordinarily by completion of a probationary or training period. Typically, such a worker will have received at least one pay raise after successful completion of the probationary or training period.

The prevailing wage may not be lower than the applicable statutory minimum wage as established by section 6(a)(1) of the FLSA, or where applicable, a higher State minimum wage. Employers must ensure that the wage rates they are quoted when conducting the prevailing wage survey meet this criteria.

To conduct a survey, the employer must obtain wage information for each job classification being performed by workers to be paid a special minimum wage. A brief job description should be prepared. This job description will also be important when conducting time studies. The job description should:

1. define the specific job duties, responsibilities and tasks;
2. include types of equipment and supplies used to perform the tasks;
3. list types of skills, education or experience levels required; and
4. indicate the location, and days and times of the week the work is to be performed.

The employer should obtain wage data from comparable firms in the area. The appropriate size of the sample - the number of firms surveyed - will depend on the number of firms doing similar work, but normally should include no less than three.

The information should be solicited from comparable businesses employing primarily workers who do not have disabilities performing similar work in the vicinity where the worker with a disability is employed. A *comparable business* is one that either employs a similar number of employees or competes for contracts of a similar size and nature.

If similar work cannot be found in the area defined by the geographic labor market (the vicinity), the closest comparable community should be used. When this is not possible, the employer has two options:

- The employer may obtain wage information from sources other than comparable businesses as long as the data obtained reflects non-entry level wage rates. Examples of other sources of wage information might be the Bureau of Labor Statistics (BLS), State employment services, temporary help firms, and private employment services.
- The employer may identify the general characteristics of the job to obtain a generic job description and search for employers whose work has similar characteristics. For example, such job comparisons might be made as follows:

skilled, semiskilled or unskilled; light duty or heavy duty; and either handwork or machine-assisted.

There are special situations in which an employer is not required to conduct a survey to determine the prevailing wage.

1. If an employer's workforce consists primarily of workers who do not have disabilities, the employer is not required to do a survey.
    - Instead, the employer may use as the prevailing wage rate the rate he or she pays to his or her experienced workers who do not have disabilities who perform similar work. Similarly, if an agency or facility places a worker with a disability on the premises of such an employer, the wage paid to the employer's experienced workers who do not have disabilities may be used as the prevailing wage.
    - Should an employer whose workforce consists primarily of workers who do not have disabilities choose to perform a prevailing wage survey (rather than adopt as prevailing the established wage rate already being paid his or her experienced workers), the Wage and Hour Division requires that the employer include the wage data from his or her own firm when conducting the survey and computing the prevailing wage.

Employers sometimes make arbitrary adjustments in the prevailing wage to account for differences in duties, methods, equipment and responsibilities between the work done by section 14(c) employees and work done by employees who do not have disabilities in competitive industry. This practice, known as "**de-skilling**," is not permitted. If comparable jobs cannot be found, prevailing wage data should be collected on jobs requiring the same general skill levels. The following is an example of de-skilling**:**

1. Assume that the properly determined prevailing wage for packaging-by-hand is $8.00 per hour and that the hand packing job performed in competitive industry normally includes the following steps: counting bolts, placing a label on the bag the bolts go in, putting 10 bolts into the labeled bag, putting 24 filled bags into a box for packing and then sealing the box.
2. De-skilling occurs when the employer lowers the prevailing wage because the workers with disabilities do not perform all components of the job that was surveyed. The workers with disabilities may not perform all components of the job because of the manner in which the work was assigned, because they are unable to or refuse to perform certain of the work components, or the particular contract being performed does not require all of the components. An example of de-skilling would be when the employer, for whatever reason, decided that labeling the bags is not as difficult as counting 10 bolts and therefore the special minimum wage of an employee who only performed labeling should be based on a prevailing wage of $7.25 an hour rather than $8.00. The same would be true if the employer decided that the SMW of an employee who only sealed the boxes should be based on a prevailing wage of $7.50 an hour.

The employer must maintain the following documentation regarding prevailing wage surveys:

1. Date of contact with firm or other source.

2. Name, address, and phone number of firm or other source.
3. Name and title of individual contacted within the firm or other source.
4. Wage rate information provided by firm or other source.
5. Brief description of work for which wage information was provided.
6. Basis for the conclusion that the wage rate was not based upon an entry-level position.

After obtaining at least three wages rates, the employer must average them to determine the prevailing wage for a particular job. The employer may use either a weighted or simple average so long as he or she is consistent.

*Commensurate wage rates*

Special minimum wages must be commensurate wage rates - based on the worker's individual productivity, no matter how limited, in proportion to the wage and productivity of experienced workers who do not have disabilities performing essentially the same type, quality, and quantity of work in the geographic area from which the labor force of the community is drawn. The key elements in determining commensurate rates are:

- Determining the standard for workers who do not have disabilities - the objective gauge against which the productivity of the worker with a disability is measured
- Determining the prevailing wage - the wage paid to experienced workers who do not have disabilities for the same or similar work and who are performing such work in the area. Most SCA contracts include a wage determination specifying the prevailing wage rates to be paid for work on the SCA contract
- Evaluating the quantity and quality of the productivity of the worker with the disability

All special minimum wages must be reviewed and adjusted, if appropriate, at periodic intervals. At a minimum, the productivity of hourly paid workers must be reevaluated every six months and a new prevailing wage survey must be conducted at least every twelve months.

**Piece Work and Hourly Rates** - If a prevailing wage survey finds that a piece rate prevails for the kind of work to be performed by the worker with a disability, there would be no need to conduct a time study for that job. The worker with a disability should be paid the same piece rate established by the prevailing wage survey. A piece rate fixes a wage payment on each completed unit of work. When the worker with a disability is to perform a production job, the simplest and most objective method of payment is by piece rate.

If the prevailing wage survey indicates that an hourly rate prevails for the kind of work performed by the worker who does not have a disability, and the section 14(c) employer wishes to pay a piece rate, time studies would be required to convert the **hourly** rate to a piece rate. Some employers may have used pre-established ("off-the-shelf") industrial standards in lieu of conducting a time study. These are typically too general to use when setting the standard for workers who do not have disabilities. If pre-existing industrial standards are adopted as the measure of production for the workers who do not have disabilities, they must be verifiable and reflect the work methods used by the workers with disabilities.

Some general principles involving time-based measurements of hourly paid workers with disabilities include:

1. Initial evaluation of worker's productivity must be made within the first month after employment.
2. Results of productivity evaluation should be recorded and the worker's wages adjusted retroactively not later than the first pay period following the initial evaluation.
3. A review of worker's productivity must be made at least every six months thereafter.
4. Time-based measurements should not be conducted before the worker has time to become familiar with the job.
5. Evaluations shall not be done when a worker is fatigued or subject to conditions that will result in less than normal productivity.
6. Just as it is recommended that either three different standard setters be timed or that the same standard setter be timed three different times and the results averaged, the worker with the disability should also be timed on three different occasions and the results averaged.
7. There are some hourly-paid jobs that do not lend themselves to complete time-based measurement because the entire job cycle is too long or because the amount of work depends upon the actions of others.
    - For example, a janitorial job often involves cleaning at a number of different sites with different cleaning tasks over the course of a week; or the bagging of groceries at a supermarket and policing the dining room at a fast food restaurant depend upon the number of customers and the products they buy.
    - An acceptable way to objectively evaluate a worker's productivity would be to set up a standardized job simulation. Using the techniques described below, time a standard setter(s) and the worker with a disability in the simulated setting.

The following is a summary of the steps an employer shall follow when conducting **a** time-based measurement when the prevailing wage survey indicated that workers were paid by the hour, not by the piece, and the employer wishes to pay a commensurate hourly rate.

1. Develop a job description.
    i. ***Define specific job duties, responsibilities and general tasks.***
    ii. List the types of skills, training or experience required.
    iii. Indicate the days and times the work is performed if such factors could have an impact of the productivity of the worker.
    iv. Indicate to whom the worker reports.
2. Perform a task analysis that includes both quality and quantity standards.
    i. ***Identify the components, tasks and subtasks to be performed.***
    ii. ***Develop an accurate picture of the method and procedures used to accomplish the tasks.***
    iii. ***Include types of equipment and supplies to be used***. Specify the area, location, floor, building, etc. where the work is to be performed.

iv. ***Establish the minimum acceptable quantity and quality standards for the job.*** These standards must be realistic and achievable by the worker who does not have a disability while working at a normal pace that could be comfortably sustained throughout an entire work shift. These standards could be based on the historic on-the-job performance of workers who do not have a disability.
v. ***Determine a definite start and stop point.*** The start point is the action which begins the job cycle, such as getting out a mop and bucket. The stop point for an hourly job is the action which completes the job, such as putting the mop and bucket away.
vi. ***Note the methods and procedures that will be used by the worker who does not have a disability when establishing the standard so that they are the same when the worker with a disability is evaluated.*** When the worker with the disability performs the actual work, it must be performed in the same way the standard setter performed the work when establishing the standard, or in a way that allows the worker with the disability to be more productive
vii. ***Make certain that the task analysis is an accurate description of the work and is the way the work is actually accomplished.***

3. Select the worker(s) who do not have disabilities to be timed (the standard setter(s)). This will usually be an employee who does not have a disability or a staff member(s) who is:
    i. Qualified to perform the task.
    ii. Familiar, experienced, and comfortable with the work.
    iii. Able to perform in a typical work environment.
    iv. Able to maintain a consistent and efficient pace.
    v. Able to perform at or close to 100% productivity.
4. Time the worker who does not have disabilities performing the job. This sets the standard of productivity (quantity and quality) of the worker who does not have disabilities for the job.
    i. This is known as setting the standard.
    ii. The individual conducting the study (the observer) must:
        1. ***Assure that the standard setter performs the task exactly as it will be performed by the worker with a disability.***
        2. ***Compare the standard setter's actions to the written procedures.***
        3. ***Structure the study to avoid, as much as possible, "lost time" situations.*** Lost time is time excluded from a time study for an activity that is not a regularly recurring part of the job. Example: time lost when a supervisor acting as the standard setter is interrupted during the time study by an employee's question.
        4. ***Time the standard setter's work using the same start and stop times as designated earlier.***
        5. ***Read the stop watch and make recordings.***

6. ***Document the measurement used to set the standard.***
7. ***Conduct the study three times and determine average time.*** It is recommended that either three different standard setters be timed or that the same standard setter be timed three different times and the results averaged. When possible, use three different people as standard setters. Using three different people allows for the fact that different people normally work at different paces.

5. Time the worker with a disability performing the job. This sets the level of productivity (quantity and quality) of the worker with a disability.

Once the time-based measurement has been established using the steps above, the employer can calculate the special minimum wage by comparing the time and prevailing wage of the non-disabled worker to that of the disable worker.

*For example: If the prevailing wage rate for the worker without a disability is $8.00 an hour and they perform the given work in one hour, and the disabled worker performed half the amount of the given work within that hour then the special minimum wage paid under a special certificate would be $4.00 and hour. If the disabled worker performed 75% of the work that the non-disabled worker performed in a given hour, then using a prevailing wage of $8.00 an hour, the special minimum wage would be $6.00 an hour.*

*Notices*

Each worker with a disability receiving a special minimum wage under FLSA Section 14(c), and, where appropriate, the parent or guardian of such worker, must be informed orally and in writing by the employer of the terms of the certificate under which such worker is employed. This requirement may be satisfied by making copies of the certificate available (see regulations 29 CFR Part 525.12(g)).

Where a worker with a disability displays an understanding of the terms of a certificate and requests that other parties not be informed, it is not necessary to inform a parent or guardian.

In addition, employers must display both the certificate and the Wage and Hour Division poster, Notice to Workers with Disabilities Paid at Special Minimum Wages (WH Publication 1284 *(http://www.dol.gov/whd/regs/compliance/posters/disab.htm)*). Where the employer finds it inappropriate to post the poster, he or she may provide the poster directly to all employees who are subject to its terms.

*Employee Rights*

All employees subject to the provisions of the FLSA have a right to file a private suit for back pay due under the FLSA and an equal amount of liquidated damages, plus attorney's fees and court costs.

In addition, any employee paid a special minimum wage (or his or her parent or guardian) may petition the Secretary of Labor, under FLSA Section 14(c)(5), to have the special minimum wage reviewed to determine if the wage is justified. The review, if granted, will be conducted by a U.S. Department of Labor Administrative Law Judge. Such petitions are completely independent of any enforcement action that may be undertaken by the Wage and Hour Division. Although the petition does not have to follow a particular format or form, it must be signed by the individual (or his or her parent or guardian) and should contain the name and address of the individual filing the petition and the name and address of his or her employer.

Recent Cases and Settlements

The following cases exemplify circumstances in which action was taken against employers who violated regulations pertaining to breaks and/or meal times:

**Employees Performing Substantial Duties during Meal Times**

The DOL brought suit against defendants, the Southern New England Telecommunications Corp. and the Southern New England Telephone Company (collectively, "SNET" or "the company") on behalf of some 1500 outside craft workers employed by SNET, seeking to enjoin violations of the overtime and recordkeeping provisions of the Fair Labor Standards Act ("FLSA" or the "Act") 29 U.S.C. §§. 207, 211(c), 215(a)(2), and 215(a)(5). The complaint alleged that SNET failed to compensate the company's outside craft workers for 30-minute lunch breaks that SNET required them to spend at outside work sites to provide security and ensure safety at the sites. The DOL sought back overtime pay and liquidated damages as well as injunctive relief.

After a nine-day bench trial, the United States District Court for the District of Connecticut issued a memorandum decision finding that because SNET's outside craft workers "perform[ed] substantial duties during their lunch periods that [were] predominantly for the benefit of SNET," Reich v. Southern New England Telecommunications Corp., 892 F.Supp. 389, 402 (D.Conn.1995), SNET violated the FLSA by not compensating them. The district court enjoined SNET from committing future violations of FLSA and found SNET liable for actual and liquidated damages. In a subsequent judgment, the district court awarded the workers actual damages, in the form of back pay, of $4,823,884.60 and an equal amount of liquidated damages for a total of $9,647,769.20. The district court then entered an amended judgment directing SNET to pay an additional $88,893.33 in overdue wages.

**Employees Carrying Portable Radios Not Considered Working during Lunch Break**

In Pima County, Arizona, county corrections officers had eight and one-half hour work shifts, and the county treated one-half hour as an unpaid lunch break. During their lunch break, corrections officers were at least implicitly required to carry their portable radios and service revolvers if they possessed one; were expected to respond to any emergency situations or criminal activity that might arise and to any citizen inquiries; and were subject to call and interruptions from fellow employees, inmates, or visitors to the jail facility. In addition, as a practical matter, corrections officers remained in uniform during lunch breaks.

In their complaints, filed on behalf of themselves and other similarly situated present and former county employees, Acorn and Hahn alleged that the county's failure to compensate them for the unpaid lunch breaks violated the overtime provisions of the Fair Labor Standards Act (201 through 219). Approximately 300 other individuals consented to join the action as plaintiffs. The county moved for summary judgment, contending that, "[d]espite the restrictions placed upon Plaintiffs during their meal periods," plaintiffs "ha[d] not alleged or set forth any facts that demonstrate their meal period activities were for the predominate [sic] benefit of Pima County." In granting the county's motion, the trial court ruled:

“Although plaintiffs were subject to being interrupted to perform job duties during their lunch breaks, there is no evidence that they spent a predominant amount of their lunch breaks in the actual performance of job duties that benefited their employer. Rather, plaintiff[s'] lunch breaks were primarily occupied by their procurement and consumption of food, and, therefore, they were “completely relieved” from duty during lunch breaks and are not entitled to overtime compensation for unpaid meal periods.”

An appeal followed the trial court's subsequent denial of plaintiffs' motion for a new trial. Accordingly, the trial court's summary judgment in favor of the county was affirmed.

Pertinent DOL/WHD Fact Sheets

**U.S. Department of Labor**
**Wage and Hour Division**

U.S. Wage and Hour Division

(Revised December 2010)

# Fact Sheet #73: Break Time for Nursing Mothers under the FLSA

This fact sheet provides general information on the break time requirement for nursing mothers in the Patient Protection and Affordable Care Act ("PPACA"), which took effect when the PPACA was signed into law on March 23, 2010 (P.L. 111-148). This law amended Section 7 of the Fair Labor Standards Act (FLSA).

**General Requirements**

Employers are required to provide "reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk." Employers are also required to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk."

The FLSA requirement of break time for nursing mothers to express breast milk does not preempt State laws that provide greater protections to employees (for example, providing compensated break time, providing break time for exempt employees, or providing break time beyond 1 year after the child's birth).

**Time and Location of Breaks**

Employers are required to provide a reasonable amount break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

A bathroom, even if private, is not a permissible location under the Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother's use, it must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from any intrusion from co-workers and the public.

**Coverage and Compensation**

Only employees who are not exempt from section 7, which includes the FLSA's overtime pay requirements, are entitled to breaks to express milk. While employers are not required under the FLSA to provide breaks to nursing mothers who are exempt from the requirements of Section 7, they may be obligated to provide such breaks under State laws.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer's business. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for

break time. In addition, the FLSA's general requirement that the employee must be completely relieved from duty or else the time must be compensated as work time applies. *See* WHD Fact Sheet #22, Hours Worked under the FLSA.

**Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**U.S. Department of Labor**
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

**1-866-4-USWAGE**
TTY: 1-866-487-9243
**Contact Us**

**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet #39: The Employment of Workers with Disabilities at Special Minimum Wages

This fact sheet provides general information concerning the application of section 14(c) of the Fair Labor Standards Act (FLSA).

## Characteristics

Section 14(c) of the FLSA auzthorizes employers, after receiving a certificate from the Wage and Hour Division, to pay special minimum wages - wages less than the Federal minimum wage - to workers who have disabilities for the work being performed. The certificate also allows the payment of wages that are less than the prevailing wage to workers who have disabilities for the work being performed on contracts subject to the McNamara-O'Hara Service Contract Act (SCA) and the Walsh-Healey Public Contracts Act (PCA).

A worker who has disabilities for the job being performed is one whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury. Disabilities which may affect productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism and drug addiction. The following, taken by themselves, are not considered to be disabilities for purposes of paying special minimum wages: education disabilities, chronic unemployment, receipt of welfare benefits, nonattendance at school, juvenile delinquency, and correctional parole or probation.

Section 14(c) does not apply unless the disability actually impairs the worker's earning or productive capacity for the work being performed. The fact that a worker may have a disability is not in and of itself sufficient to warrant the payment of a special minimum wage.

## Coverage

Any person who works on or otherwise handles goods that are moving in interstate commerce is individually subject to the minimum wage and overtime requirements of the FLSA. In addition, employees of enterprises operated for a business purpose that have an annual dollar volume of sales or business done of at least $500,000 are also subject to the FLSA's requirements. Furthermore, employees of public agencies; hospitals; institutions primarily engaged, in the Act's own words, "in the care of the sick, the aged, or the mentally ill or defective who reside on the premises;" schools for children who have disabilities; or preschools, elementary or secondary schools, or institutions of higher education are covered on an enterprise basis regardless of the annual dollar volume of the employer.

## Requirements

### Certification

Employers must obtain an authorizing certificate from the Wage and Hour Division prior to paying special minimum wages to employees who have disabilities for the work being performed. Employers shall submit a properly completed application (Form WH-226-MIS, Application for Authority to Employ Workers with Disabilities at Special Minimum Wages.) and the required supporting documentation to: United States

Department of Labor, Employment Standards Administration, Wage and Hour Division, 230 South Dearborn Street, Room 514, Chicago, Illinois, 60604-1757; (312) 596-7195. Certificates covering employees of work centers and patient workers normally remain in effect for two years. Certificates covering workers with disabilities placed in competitive employment situations or School Work Exploration Programs (SWEPs) are issued annually.

**Commensurate Wage Rates**

Special minimum wages must be commensurate wage rates - based on the worker's individual productivity, no matter how limited, in proportion to the wage and productivity of experienced workers who do not have disabilities performing essentially the same type, quality, and quantity of work in the geographic area from which the labor force of the community is drawn. The key elements in determining commensurate rates are:

- Determining the standard for workers who do not have disabilities, the objective gauge against which the productivity of the worker with a disability is measured.
- Determining the prevailing wage, the wage paid to experienced workers who do not have disabilities for the same or similar work and who are performing such work in the area. Most SCA contracts include a wage determination specifying the prevailing wage rates to be paid for work on the SCA contract.
- Evaluating the quantity and quality of the productivity of the worker with the disability.

All special minimum wages must be reviewed and adjusted, if appropriate, at periodic intervals. At a minimum, the productivity of hourly paid workers must be reevaluated every six months and a new prevailing wage survey must be conducted at least every twelve months.

**Overtime, Child Labor and Fringe Benefits**

Generally, workers subject to the FLSA, SCA, and/or PCA must be paid overtime at least 1 1/2 times their regular rate of pay for all hours worked over 40 in a workweek. Minors younger than 18 years of age must be employed in accordance with the youth employment provisions of the FLSA and PCA. Neither the FLSA nor PCA have provisions requiring the payment of fringe benefits. Workers paid special minimum wages, however, must receive the **full** fringe benefits listed on the wage determination when performing work subject to the SCA.

**Enforcement**

The Wage and Hour Division is responsible for the administration and enforcement of the FLSA. In addition, any worker with a disability paid at special minimum wages, or his/her parent or guardian, may petition the Administrator of the Wage and Hour Division for a review of their special wage rates by a Department of Labor Administrative Law Judge.

**Worker Notification**

Each worker with a disability and, where appropriate, the parent or guardian of such worker, shall be informed orally and in writing by the employer of the terms of the certificate under which such worker is employed. In addition, employers must display the Wage and Hour Division poster, Notice to Workers with Disabilities Paid at Special Minimum Wages (WH Publication 1284).

**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet #39A: How to Obtain a Certificate Authorizing the Payment of Special Minimum Wages to Workers with Disabilities under Section 14(c) of the Fair Labor Standards Act (FLSA)

This Fact Sheet provides general information concerning the establishment of prevailing wages and commensurate wages as they pertain to the employment of workers with disabilities at special minimum wages. Please read Fact Sheet # 39, The Employment of Workers with Disabilities at Special Minimum Wages, for an overview of the general provisions of FLSA Section 14(c). Please consult the Regulations, 29 CFR Part 525, Employment of Workers with Disabilities under Special Certificates, for detailed information concerning Section 14(c).

**What is the difference between a certified and a noncertified employer?**
Employers who are certified - who have received a certificate from the U. S. Department of Labor - may choose to pay special minimum wages (SMW) to workers who have disabilities when those disabilities diminish their productivity for the work being performed. A SMW will be lower than the applicable minimum wage required by the FLSA, except in certain cases when the work being performed is subject to the McNamara-O'Hara Service Contract Act (SCA). Without a current certificate, employers must pay workers with disabilities at least the applicable FLSA minimum wage or SCA prevailing wage, where appropriate, for all covered work, regardless of the productivity of the workers.

**Where and how do I apply for a certificate?**
Employers wishing to obtain a certificate under Section 14(c) must complete and submit the following forms, along with certain required supporting documentation:

- Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (Form WH-226). Using this form, the applicant reports information regarding the work that will be performed, the prevailing wage surveys conducted by the employer, and the productivity evaluations conducted to establish the commensurate pay rates the firm pays the workers with disabilities. If workers with disabilities will be paid a SMW for work subject to the McNamara-O'Hara Service Contract Act (SCA), data must also be provided regarding such contract work.

- Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (Form WH-226A). This form requires the applicant to list the names of the individuals that will be paid SMWs, identify the disabilities that impair their productivity, and report their average earnings. A separate WH-226A must be submitted for each branch establishment (physically separate location) at which employees with disabilities will receive SMWs.

Instructions for completing the above forms are included on the last page of each form. The forms may be obtained from any Wage and Hour Division Office (addresses may be found in the blue pages of the telephone directory). In addition, these forms may be viewed and "downloaded" from the Wage and Hour Division Homepage.

**Where do I submit my completed application?**
The Midwest Regional Office of the Wage and Hour Division is the only office that processes applications under Section 14(c) and issues certificates authorizing the payment of SMWs to workers with disabilities. Completed applications must be mailed to the following address: U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, 230 South Dearborn Street, Room 514, Chicago, Illinois 60604-1757.

**What types of certificates are issued and how long do they remain in effect?**
Certificates under section 14(c) are issued to employers on an establishment basis. The certificates will indicate whether the establishment is a work center, also known as community rehabilitation program; a hospital/residential care center (a facility that employs patient workers); a business establishment that is not a work center or an employer of patient workers; or a School Work Experience Program (SWEP).

***Work centers*** - formerly referred to as "sheltered workshops" - historically have provided rehabilitation services, day treatment, training, and employment opportunities at their facilities to individuals with disabilities. Work centers need submit only one application (WH-226), but must include a separate supplemental sheet (WH-226A) for each physically separate branch location where workers with disabilities are employed at SMWs. The Wage and Hour Division will issue separate certificates for each location. Work center certificates remain in effect for two years.

***Hospitals/residential care facilities*** which employ patient workers may be issued certificates authorizing the payment of SMWs. These certificates remain in effect for two years. If the facility also operates a work center, however, it must apply for a separate certificate for the work center. If the hospital or residential care facility places patients in jobs at business establishments in the community, it must either obtain a work center certificate or ensure that the business establishment has its own certificate if those workers are to receive SMWs.

A ***business establishment*** (not a work center or a hospital/residential care facility) that chooses to employ workers with disabilities as SMWs must also obtain a certificate from the Department of Labor. If the employer has multiple establishments, a certificate must be obtained for each establishment in which workers with disabilities will be employed at SMWs. Business establishment certificates expire annually. But if an individual with a disability is placed at a business by a work center, supervised by work center staff, and carried on the work center's payroll, the business establishment need not obtain a certificate - the authorization to pay a SMW to the worker will stem from the certificate held by the work center. Such placements are sometimes called "supported employment" or "an enclave" worksite.

***School Work Exploration Programs*** (SWEP) place students with disabilities who receive SMWs at work sites in the community. Certificates for this program are issued to the school administering the program and expire annually.

**Do certificates expire?**
Certificates are issued with both an effective date and an expiration date. The certificate, along with the employer's authorization to pay special minimum wages, will expire on the indicated date unless the employer properly files an application for renewal with the Wage and Hour Division before the expiration date. If an application for renewal has been properly and timely filed, an existing special minimum wage certificate shall remain in effect until the application for renewal has been granted or denied. Should a certificate to pay special minimum wages expire and no application of renewal has been properly and timely filed, an employer would be required to pay all workers covered by the FLSA at least the full minimum (or where applicable, the full McNamara-O'Hara Service Contract Act prevailing wage) for all work performed after the certificate expiration date.

**How are existing certificates renewed?**
An expiration date is printed on each certificate. Approximately two months before a certificate expires, the employer will be notified by the Wage and Hour Division that it is time to apply for a new certificate. Renewal applications are submitted on the same forms (WH-226 and WH-226A) and in the same manner as the initial application. If the renewal application is properly filed with the Wage and Hour Division before the existing certificate expires, the employer's existing authority to pay SMWs continues in effect until the renewal application is either granted or denied.

**How are applications for certification processed?**
Department of Labor Wage Specialists, employed by the Wage and Hour Division's Midwest Regional Office located in Chicago, Illinois, will review each application for completeness, accuracy and compliance with the provisions of the FLSA, including Section 14(c). Once these criteria have been met, the certificate will be issued and mailed to the applicant. In an effort to expedite issuance of the certificate, the reviewing Wage Specialist frequently will contact an applicant by telephone for clarification or to request required supporting documentation. All submitted materials are reviewed to ensure each applicant understands the requirements of Section 14(c) and has achieved and maintained compliance with the provisions of the FLSA. Occasionally, based on the information provided on the application, the Wage Specialists will identify and supervise the payment of back wages due workers with disabilities.

**What if I have questions as I complete the application?**
Both the WH-226 and the WH-226A include detailed instructions. Read them carefully. However, if you still have questions regarding processing of the certificates, you may wish to contact the Certification Team member who covers your state.

- (312) 596-7198: California (business establishments and schools only), Colorado, Delaware, District of Columbia, Florida, Guam, Illinois, Indiana, Iowa, Kansas, Maine, New Jersey, North Dakota, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, Tennessee, the Virgin Islands, and Virginia.
- (312) 596-7200: Alabama, Arkansas, California (community rehabilitation centers and hospital/residential care facilities only), Hawaii, Idaho, Louisiana, Maryland, Michigan, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, South Carolina, Utah, Washington, West Virginia, Wisconsin, and Wyoming.
- (312) 596-7202: Alaska, Arizona, Connecticut, Georgia, Kentucky, Massachusetts, Minnesota, Mississippi, Montana, New Mexico, New York, Ohio, Oregon, South Dakota, Texas, and Vermont.

Certificate process questions may be submitted in writing and mailed to ATTN: National Certification Program Manager at the U.S. Department of Labor, Wage Hour Division, National Certification Team, P.O. Box 56447, Atlanta, GA 30343-0447.

**What can an employer do to expedite the certification process?**
- Designate an individual within your organization who understands both the certification and compliance principles of Section 14(c) to oversee the creation and submission of the application.
- Submit a complete, accurate and timely application that includes all the required supporting documentation.
- Communicate with the Wage and Hour Division Section 14(c) Certification Team before, during and after the submission of the application.
- Communicate with your local Wage and Hour Division Office concerning interpretations of the regulations and enforcement (non-certification) issues. You may also call 1-866-4US-WAGE (1-866-487-9243).

**Can my application/renewal application be denied or my certificate be revoked?**
Yes. The granting of a certificate is not a statement of compliance by the Wage and Hour Division. Possession of a certificate does not convey a good faith defense should violations of the law occur. A certificate will be denied if the application is incomplete, makes false statements, or does not include the proper supporting documentation and attestations. If denied, the applicant will be advised in writing and told the reasons for the denial as well as the right to petition under 29 CFR Part 525.18. SMW certificates may be revoked or an application to renew an existing certificate may be denied if it is found that false statements were made or facts were misrepresented in obtaining the certificate; any of the provisions of the FLSA, SCA, or the terms of the certificate have been violated; or it is determined that the certificate is no longer necessary to prevent the curtailment of employment opportunities for workers with disabilities. Except in cases of willfulness or those in which the public interest requires otherwise, before an application for renewal is denied facts or conduct which may warrant such actions shall be called to the attention of the employer in writing and such employer shall be afforded an opportunity to demonstrate or achieve compliance with all legal requirements.

**Can an employer whose certificate has been revoked or renewal application denied appeal these actions**?
Yes. Any person aggrieved by any action of the Administrator of the Wage and Hour Division having to do with the issuance of certificates under Section 14(c) of the FLSA may file with the Administrator, within 60 days of the action, a petition for review. Such review, if granted, shall be made by the Administrator. Other interested parties, to the extent it is deemed appropriate, may be afforded an opportunity to present data and views.

**Where to Obtain Additional Information**
**For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

For more information about these provisions, review the other Fact Sheets in this series which address Section 14(c) compliance issues located at http://www.dol.gov/esa/whd/fact-sheets-index.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**U.S. Department of Labor**
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**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised May 2009)

# Fact Sheet #39B: Prevailing Wages and Commensurate Wages under Section 14(c) of the Fair Labor Standards Act (FLSA)

This Fact Sheet provides general information concerning the establishment of prevailing wages and commensurate wages as they pertain to the employment of workers with disabilities at special minimum wages. Please read Fact Sheet No. 39, The Employment of Workers with Disabilities at Special Minimum Wages, for a general overview of the provisions of Section 14(c). Please consult the Regulations, 29 CFR Part 525, Employment of Workers with Disabilities under Special Certificates, for detailed information concerning Section 14(c). These Regulations may be found at http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_525/toc.htm.

**What is a commensurate wage?**
A **commensurate wage** is a special minimum wage paid to a worker with a disability that is based on his or her individual productivity (no matter how limited) in proportion to the productivity of experienced workers who do not have disabilities performing essentially the same type, quality, and quantity of work in the vicinity where the worker with a disability is employed. The commensurate wage in the context of work subject to Section 14(c) is always less than the applicable minimum wage required by section 6(a) of the FLSA, or where applicable, the prevailing wage required by a McNamara-O'Hara Service Contract Act (SCA) Wage Determination.

**How does an employer determine the proper commensurate wage for each employee with a disability?**
In order to determine the commensurate wage, the employer must first examine the work to be performed by the employee with a disability, and through the use of an accepted work measurement technique, develop a **"standard"** that accurately measures the quality and quantity of that same work when performed by workers who do not have disabilities. Work measurement methods, such as time studies, *Modular Arrangement of Predetermined Time Standards (MODAPTS)*, and *Methods-Time Measurement*, are used by employers to determine the length of time it should take a worker who does not have a disability to perform an operation, or element of an operation. The commensurate rate is then determined by comparing the performance of the worker with a disability against that **"standard."** In very simple terms, if the worker with a disability is 60% as productive when performing a particular job as is the experienced worker who does not have a disability performing the exact same job, the commensurate wage for that worker with a disability would be at least 60% of the prevailing wage (the wage rate paid to the experienced worker who does not have a disability).

**What is a prevailing wage under Section 14(c)?**
The prevailing wage for a particular job performed by a worker with a disability who receives a special minimum wage is the wage paid experienced workers who do not have disabilities performing essentially the same type of work in the vicinity. An employer paying a special minimum wage must be able to demonstrate that the prevailing wage rate used to determine a commensurate wage was objectively determined. Normally, prevailing wage rates are based on the results of surveys conducted by the employer. The prevailing wage is not an entry-level wage or a training wage, but the wage rate paid experienced employees after completion of any training or probationary periods. An experienced worker is one who has learned the basic elements or requirements of the work to be performed, ordinarily by completion of a probationary or training period. Typically, such a worker will have received at least one pay raise after successful completion of the probationary or training period. The prevailing wage may not be lower than the applicable statutory minimum wage as established by section 6(a)(1) of the FLSA or, where applicable, a higher state minimum wage.

**How does an employer conduct a prevailing wage survey under Section 14(c)?**
To conduct a survey, the employer must obtain wage information for each job classification being performed by workers to be paid a special minimum wage. A brief job description should be prepared that defines the specific job duties, responsibilities and tasks; identifies the types of equipment and supplies used to perform the tasks; lists the types of skills, education or experience levels required; and indicates the location, and days and times of the week the work will be performed.

The employer should obtain wage data from comparable businesses in the vicinity that primarily employ workers who do not have disabilities performing the same work and utilizing similar methods and equipment as used by the worker with a disability. A *comparable business* is one that either employs a similar number of employees or competes for contracts of a similar size and nature. The appropriate size of the sample - the number of firms surveyed - will depend on the number of firms doing similar work in the vicinity, but normally should include no less than three. The prevailing wage information should be solicited, preferably in writing, and the employer conducting the survey should record the following information regarding each prevailing wage survey contact:

(1) date of contact;
(2) name, address and phone number of firm contacted;
(3) individuals contacted within each firm and the title of each individual;
(4) the wage rate information provided and the basis for concluding that each rate submitted was not based upon an entry level position;
(5) a brief description of work for which wage information was collected.

After contacting a sufficient number of comparable firms, the employer must average the wage information provided to determine the prevailing wage for a particular job. The employer may use either a weighted or simple average so long as he or she is consistent. See the following example:

**Weighted Average vs. Simple Average**

| Employer | No. of Employees | Wage Rate Reported | Gross Wages (#Employees X Wage) |
|---|---|---|---|
| XYZ, Inc. | 99 | $7.55 | $747.55 |
| ABC, Inc. | 17 | $7.82 | $132.94 |
| RST, Ltd. | 25 | $8.00 | $200.00 |
| 3 employers | 141 employees | $23.37 | $1,080.49 |

***Weighted Average:*** $1,080.49 ÷ 141 employees = $7.66305 or $7.67*

***Straight Average:*** $23.37 ÷ 3 employers = $7.79

*Note that in this example the weighted average yields a prevailing wage rate of $7.66305, but the employer rounded it up to $7.67 per hour. If the employer rounded to $7.66, he or she would be establishing a prevailing wage rate that is **less** than the true prevailing wage rate (less by $0.00305 per hour). The Wage and Hour Division will not normally question computations that are carried out to the fifth decimal point and then **rounded up** to four decimal places. The employer could, of course, round up (but not merely round off) sooner. For example, .04974 should be rounded to .0498 or .05.

**Must all employers of workers with disabilities paid special minimum wages conduct prevailing wage surveys?**

No. If an employer's workforce consists primarily of workers who do not have disabilities, the wage rate that the employer pays to his or her experienced workers who do not have disabilities who perform similar work may be adopted as the prevailing wage. Similarly, if an agency or community rehabilitation program places a worker with a disability on the premises of such an employer, the wage paid the employer's experienced workers who do not have disabilities performing similar work may be used as the prevailing wage.

In addition, the prevailing wage for workers with disabilities performing as service employees on contracts subject to the Service Contract Act would be the wage listed for the classification of work being performed on the Department of Labor Wage Determination included in the contract (if any). If a Wage Determination is included in the contract, all service employees (included those paid special minimum wages) must also receive the full fringe benefits listed on the Wage Determination. *Please see Fact Sheet 39F, The Payment of Special Minimum Wages to Workers with Disabilities Who Are Employed on Federal Service Contracts Subject to the McNamara-O'Hara Service Contract Act,* for more information concerning the Service Contract Act.

Finally, if the employer has a subcontract to perform a job in essentially the same way and with the same type of equipment as the prime contractor, the employer may use as the prevailing wage the wage rate the prime contractor pays to his or her experienced workers.

**How often must an employer conduct a prevailing wage survey?**

The prevailing wage survey must be conducted prior to paying a special minimum wage. It then must be reviewed and updated at least once a year - more frequently when a change in the prevailing wage has most likely occurred, such as when the FLSA minimum wage or a higher state minimum wage has been increased.

**A word about the rules of ROUNDING when computing special minimum wages.**

Section 14(c) requires that workers with disabilities for the work performed who receive special minimum wages must receive **at least** the commensurate wage for all hours worked. An employer who follows the normal business rules of rounding - rounding "up" only when the last decimal point is a five or higher - may actually be underpaying workers with disabilities. Although the underpayment per unit produced would be very small, the eventual back wage liability could be quite large considering the number of units that could be produced over an extended period of time by a number of different workers. This can be avoided by carrying computations out to the fifth decimal and then always rounding up to the fourth place. The Wage and Hour Division will accept the practice of carrying out computations to the fifth decimal point and then rounding up to the fourth decimal place as compliance when computing special minimum wages due workers with disabilities under Section 14(c). Of course, an employer may round "up" sooner than the fifth decimal point.

How can I obtain more information about commensurate wages, prevailing wages, or other provisions of Section 14(c) and the FLSA?

For more information about these provisions, review the other fact sheets in this series which address Section 14(c) located at http://www.dol.gov/esa/sec14c/index.htm or call your local Wage and Hour Division Office. These offices can be found in the blue pages of your telephone directory. You may also call 1-866-4US-WAGE (1-866-487-9243). For more information about other laws enforced by the Wage and Hour Division, visit our e-laws Advisor at http://www.dol.gov/elaws/.

This fact sheet is intended as general information only and does not carry the force of legal opinion.

**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

## Fact Sheet #39E: Determining Hourly Commensurate Wages to be Paid Workers with Disabilities under Section 14(c) of the Fair Labor Standards Act (FLSA)

This Fact Sheet provides general information concerning the establishment of prevailing wages and commensurate wages as they pertain to the employment of workers with disabilities at special minimum wages. Please read Fact Sheet # 39, The Employment of Workers with Disabilities at Special Minimum Wages, for an overview of the general provisions of FLSA Section 14(c). Please consult the Regulations, 29 CFR Part 525, Employment of Workers with Disabilities under Special Certificates, for detailed information concerning Section 14(c).

**How may a certified employer determine an hourly commensurate wage rate for a worker with a disability that impairs the employee's productivity for the work being performed?**

The employer must first develop a complete analysis of the work that is to be performed by the worker with a disability. It is important to consider all of the tasks to be performed; the method, materials and equipment to be used; and any other factors that may affect the work (such as the location, the time of day, the need to work in extreme heat, etc.).

Determine and define the minimum quality and quantity standards that must be met by the worker(s) performing the job (discussed further below). These standards must be applied equally to both the workers who have disabilities for the work being performed and those workers who do not have disabilities for the work being performed.

Determine the prevailing wage for the work to be performed. In order to pay a commensurate wage, the employer must first determine the wage that prevails in the vicinity for essentially the same type, quantity, and quality of work when performed by an experienced worker who does not have a disability. See Fact Sheet #39B, *Prevailing Wages and Commensurate Wages under Section 14(c) of the FLSA*, for a discussion on how to determine prevailing wage rates.

Determine the "standard" for the job - which reflects the productivity, in terms of quality and quantity, of an experienced worker who does not have a disability - through an accepted method of industrial work measurement. Such methods may include stopwatch time studies, predetermined time systems, or standard data or other recognized measurement methods. It is imperative that the work measurement method include all aspects of the job that will be performed by the workers with disabilities and utilize both the quality and quantity standards developed for the job.

Evaluate, in terms of quality and quantity, the productivity of each individual worker with a disability as he or she performs the exact same job for which the standard was established in the above step. ***Behavioral factors - such as personal appearance and hygiene, promptness, social skills, willingness to follow orders, etc. - may not be used when evaluating the worker's productivity.***

Determine the relative productivity level of each worker with a disability and compare it to the standard established by the worker who does not have a disability. Apply this percentage to the prevailing wage to determine that worker's commensurate wage. Simply put, if the prevailing wage is $8.00 per hour and the

worker with a disability receives a 60% productivity rating, the commensurate wage for that worker would be $4.80 per hour ($8.00 multiplied by 60%).

**How often must an employer evaluate the productivity of a worker with a disability who is paid an hourly wage rate?**

An initial evaluation of a worker's productivity must be made within the first month after employment begins. An employer must thereafter evaluate the productivity of each worker with a disability who is paid an hourly commensurate wage rate at least every 6 months, or whenever there is a change in the methods or materials used or the worker changes jobs. These reviews must be conducted in a manner and frequency to insure payment of commensurate wages. The results of each evaluation shall be properly recorded and the worker's wages shall be adjusted no later than the first complete pay period following the evaluation.

**Does the Department of Labor require the use of any particular work measurement method when evaluating productivity levels?**

No, but the work measurement method must be verifiable through the use of established industrial work measurement techniques. For example, Wage and Hour accepts such methods as stopwatch time studies, Methods-Time Measurement (MTM) and Modular Arrangement of Predetermined Time Standards (MODAPTS). Whatever work measurement method is used, neither the standard setter nor the worker with a disability may be evaluated before having the opportunity to become familiar with the job or at a time when the worker is fatigued or subject to conditions that result in less than normal productivity. It is recommended that at least three different workers who do not have disabilities for the work being performed be evaluated and that their individual productivity ratings be averaged to determine the standard. Such averaging, although not required by the Regulations, 29 CFR Part 525, takes into consideration that even experienced workers work at different paces.

**What if the job includes several varied tasks and the employer wants to pay only one hourly rate?**

If the job includes several varied tasks, the employer may perform a work measurement on each task and arrive at an overall standard by weighting each task by the proportion of time spent performing that task.

- For example if the productivity rating (incorporating both quality and quantity) of a worker with a disability was 30% in one task and 50% in another, and the established standard determined that each task took 50% of the total time, the rating of the worker with a disability would be 40% (30% + 50% divided by 2). If the prevailing wage were $10.00, the commensurate rate would be $4.00 ($10.00 multiplied by 40%).

**What is factoring and is it an acceptable practice?**

Factoring is the work measurement method of breaking a job into its components, as described above, and then rating the worker on each individual component. Employers often use factoring when establishing commensurate wage rates. The Wage and Hour Division accepts factoring as a valid method of work measurement under Section 14(c), as long as the employer rates workers only on the job components actually performed. The employer may not penalize a worker because he or she fails to perform, or is incapable of performing, a certain component(s) of the job. For example, an employer would be improperly "factoring" if he or she included a rating of "zero" for a task that the employee, for whatever reason, did not perform. Such factoring would significantly reduce the employee's rating and, thus, his or her commensurate wages. In addition, the employer would be evaluating the employee for a job he or she would not actually be performing in the future - as it can be reasonably expected that the employer did not intend to pay the worker to "idly sit by" and not perform the task for which a "zero rating" was assigned.

**Must an employer include a personal fatigue and delay factor (PF&D) when determining hourly commensurate wage rates?**

No, a PF&D allowance does not have to be included when determining hourly commensurate wage rates because hourly workers must be paid for the short breaks and downtime which a PF&D allowance is designed to cover. A PF&D allowance is required by Regulations 29 CFR Part 525 only when calculating piece rates (for more information on PF&D, please see Fact Sheet #39D, *Incorporating Personal Time, Fatigue and Delay (PF&D) Allowances When Determining Piece Rates to be Paid Workers with Disabilities Receiving Special Minimum Wages under Section 14(c) of the FLSA*. However, evaluations of workers paid on an hourly basis should not be conducted if the worker is "fatigued or subject to conditions that may result in less than normal productivity." The employer may choose to include a PF&D allowance if the worker cannot be evaluated when he or she is not fatigued or when work conditions are not optimal, or because the employer wishes to pay workers with disabilities wages that exceed the applicable commensurate wage rate.

**How does an employer take both quality and quantity into account when evaluating worker productivity?**

FLSA section 14(c)(1)(B) and Regulations 29 CFR Part 525 require that the wages paid workers with disabilities be commensurate with those paid experienced workers who do not have disabilities employed in the vicinity for essentially the same type, quality and quantity of work. Two of the more common methods employers use to ensure that both quality and quantity are properly considered are rework and the "90/10 form."

Rework is perhaps the simplest method to ensure that quality and quantity are properly addressed when evaluating the productivity of workers paid by the hour. It requires that the employer accurately define both the minimal acceptable quantity standard (amount of work) and the minimal acceptable quality standard before workers are evaluated. These standards must be predetermined, written, and clearly articulated to the workers before the time studies are conducted. Examples of quality standards for hourly paid jobs could include such things as the number of streaks left on a mirror or window to be cleaned by a janitor, or the number of pieces of mail that were incorrectly sorted by a mail room attendant; or how many "patches" of uncut grass remain on a lawn being mowed by a landscape worker.

The employer then time studies the worker who does not have a disability until the worker indicates that he or she has satisfactorily completed the work. The "clock" is then stopped, the time is recorded, and the work product is examined by the individual(s) conducting the study to ensure that the worker has met the pre-established minimum acceptable quality and quantity standards. If the minimum acceptable standards have been met, the time as recorded is the standard by which the work of the worker with the disability is compared to establish the commensurate wage rate. If either of the minimum acceptable standards is not met, the worker is advised of the shortcoming(s) and the study will resume with the worker performing "rework." The "clock" will again be started and continue ticking while the worker corrects/completes the work product to that point where it meets the minimum acceptable standards. The time spent during the initial study, and all time spent performing rework, are then added together to establish the standard of the worker who does not have a disability.

The worker with a disability is then subjected to an identical time study and held to the exact quality and quantity standards as the worker who does not have a disability. If either of the minimum acceptable standards is not met, the worker is advised of the shortcoming(s) and the study will resume with the worker performing rework. The "clock" will again be started and continue ticking while the worker corrects/completes the work product to that point that it meets the minimum acceptable standards. The time spent during the initial study, and all time spent performing rework, are then added together and compared to the total time spent by the standard setter (the worker who does not have a disability). The percentage obtained by this comparison is then applied to the prevailing wage in order to determine the commensurate wage. When using the rework method, it

is imperative that both the standard setter and the worker with a disability be held to the same minimum acceptable standards of quality and quantity.

**The 90/10 rating form**. The so-called "90/10 form" was developed in response to recommendations made by the now defunct Advisory Committee on Special Minimum Wages. It assigns a 90 percent weight to the quantity of work performed and a 10 percent weight to the quality of work performed. This means that the employer compares the quantity of work performed by the worker with a disability to that of the standard setter and multiplies this figure by 90% and compares the quality of the work performed by the worker with a disability to that of the standard setter and multiplies that by 10%. The two ratings are then added together to determine the overall productivity rating. As with rework, it is imperative that the minimum acceptable standards of both quality and quantity be well defined and communicated to the workers.

The Wage and Hour Division has determined that when properly executed, the 90/10 form, as a general rule, results in the payment of an objectively determined commensurate rate. No such determination has been made for any other method that assigns a higher weight to the quality rating than 10 percent. Employers who wish to do so will be required to submit documentation of sufficient detail to justify such ratings. Applicants will also be required to demonstrate that workers who do not have disabilities earning the prevailing wage when performing essentially the same type of work are also held to such quantity and quality of work standards in the vicinity.

Although not required by the regulations, various forms have been created by employers and interested parties to assist them in performing the 90/10 Rating. The Wage and Hour Division has not officially reviewed or approved any of these forms, but it will accept their use when properly completed. Although the 90/10 methodology was designed for use when "rework" is not included in the time studies, some employers still choose to use the 90/10 rating method even after including rework. In these situations, WH accepts this practice as long as there is no deduction from the quality rating.

Under the 90/10 Rating, the standard setter must meet the pre-established minimum acceptable quality and quantity standards when being time studied. If he or she fails to meet those standards, the employer must either redefine the standards to comport with the performance of the workers who do not have disabilities or conduct additional time studies to validate the standards.

**Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

For more information about these provisions, review the other Fact Sheets in this series which address Section 14(c) compliance issues located at http://www.dol.gov/esa/whd/fact-sheets-index.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

# Fact Sheet #39C: Hours Worked and the Payment of Special Minimum Wages to Workers with Disabilities under Section 14(c) of the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the FLSA concept of hours worked as it pertains to the employment of workers with disabilities at special minimum wages. Please read Fact Sheet #39, ***The Employment of Workers with Disabilities at Special Minimum Wages***, for an overview of the general provisions of FLSA Section 14(c) and Fact Sheet #22, ***Hours Worked Under the Fair Labor Standards Act (FLSA)*** for a general overview of the concept of hours worked. Please consult the Regulations, 29 CFR Part 525 (***Employment of Workers with Disabilities under Special Certificates***), and Part 785 (***Hours Worked***) for detailed explanations of both Section 14(c) and the concept of hours worked.

The general provisions of the FLSA concept of hours worked - determining when an employee is performing work for which he or she must be compensated - apply to workers with disabilities who receive special minimum wages under Section 14(c). But the unique characteristics of the work places operated by employers under Section 14(c) can cause confusion as to when an employee is performing compensable work. This fact sheet addresses several issues that often impact the employment of workers with disabilities.

## Down Time

Down time refers to compensable time when the worker with a disability is on the job but is not producing because of factors not within his or her control - such as lack of work, equipment breakdowns, etc. Workers with disabilities, including those paid piece rates, are required to be paid for down time at a rate equal to their average hourly earnings during the most representative period, not to exceed a quarter (calendar or fiscal). An employer must be consistent in the method used when computing the employee's average hourly earnings.

As a practical matter, workers with disabilities employed by Community Rehabilitation Programs are often unable to leave their place of employment because of special transportation arrangements or other reasons unique to their condition. The employer may provide rehabilitation services to workers with disabilities during periods of extended down time and such time need not be considered compensable so long as the services provided are not primarily for the purpose of increasing job productivity; such time is clearly identified, recorded, and segregated on time records; and the services are provided in an area away from the production area.

## Work Samples and Work Simulations

Work samples and work simulations are types of rehabilitation services that are structured to resemble the work performed in the employer's facility but are performed away from the normal production area. These activities do not yield a product used to fulfill any of the employer's contracts and the employer does not derive any economic benefit from the product. Such samples and simulations are supervised by non-production personnel and are a specific part of a well-defined program of rehabilitation.

The Wage and Hour Division does not consider work samples or work simulations, as described above, to be hours worked or compensable when performed by workers with disabilities who receive special minimum wages under Section 14(c) provided none of the material, goods, or services produced enters into the stream of commerce by being intermingled with the normal production of the employer. Typically, such materials would be discarded or recycled for future use in work simulation.

**Travel Time**

The time spent by workers with disabilities being transported to and from the work site and their homes (including group homes and dormitories) by the employer at the beginning and end of the day is not hours worked. Such transportation retains the characteristic of "normal home to work travel" and need not be compensated.

When workers with disabilities report to a centralized pick-up spot to get a ride in their facility's vehicle to a remote job site that may not be readily accessible by public transportation, such transportation retains the characteristic of "normal home to work travel." Such travel does not constitute hours worked so long as the workers with disabilities do not perform any work at the pick-up spot, they do not engage in any task that could be considered an integral part of their principal activity, and they retain the option to transport themselves to the job site. At times, because of their disabilities, the workers' option to transport themselves to the job site may be only theoretical. For example, the worker with a disability may not be eligible for a driver's license or his or her guardian may be unable to provide transportation. The fact that the transportation option is only theoretical does not change the Department's position that such travel is not hours worked nor compensable.

Any time spent in transportation between job sites during the course of the workday is hours worked and the employee shall be paid a wage rate that is at least equal to his or her average hourly earnings during the most recently completed representative period, not to exceed a quarter (calendar or fiscal). An employer must be consistent in the method used when computing the employee's average hourly earnings.

**Rest Periods and Coffee Breaks**

Although the FLSA does not require rest periods or coffee breaks, it is customary in industry for employees to be given such breaks, which last generally between 5 and 20 minutes. Such breaks are considered to be primarily for the benefit of the employer since they tend to promote the efficiency of the employee and are considered to be working time. Whether or not a worker with a disability receiving special minimum wages must be paid for such break periods depends on the method of compensation. Hourly paid workers must be compensated for breaks at their normal hourly wage. But no additional compensation is due workers with disabilities paid piece rates if the piece rate was properly established because such piece rates include time for personal time, fatigue, and unavoidable delays (PF&D). The PF&D allowance will also take into account the time workers spend on traditional breaks or rest periods. Please see Fact Sheet #39D, ***Incorporating Personal Time, Fatigue and Delay (PF&D) Allowances When Determining Piece Rates to be Paid Workers with Disabilities Receiving Special Minimum Wages under Section 14(c) of the Fair Labor Standards Act (FLSA)***, for more information on PF&D.

**Recording Hours Worked**

The FLSA requires employers to keep records of both the daily and weekly hours worked (see Subpart A of Regulations, 29 CFR Part 516). The employer must also clearly distinguish in its records non-compensable hours from hours that would be considered hours worked, regardless of the category of non-compensable time involved.

**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

## Fact Sheet #39D: Incorporating Personal Time, Fatigue and Delay (PF&D) Allowances When Determining Piece Rates to be Paid Workers with Disabilities Receiving Special Minimum Wages under Section 14(c) of the Fair Labor Standards Act (FLSA)

This Fact Sheet provides general information concerning the establishment of prevailing wages and commensurate wages as they pertain to the employment of workers with disabilities at special minimum wages. Please read Fact Sheet # 39, The Employment of Workers with Disabilities at Special Minimum Wages, for an overview of the general provisions of FLSA Section 14(c). Please consult the Regulations, 29 CFR Part 525, Employment of Workers with Disabilities under Special Certificates, for detailed information concerning Section 14(c).

**What is PF&D?**

Normal fatigue prevents all employees, not just those with disabilities, from producing at their most rapid pace throughout the workday. In addition, breaks, cleanup time, and delay time while materials are being restocked or the finished products are removed all reduce the amount a worker can produce. Employers must take this nonproductive time into consideration when determining piece rates used to compute special minimum wages by including what is known as a Personal Time, Fatigue, and Delay (PF&D) Factor. Regulations, 29 CFR Part 525.12(h)(2)(ii), states that when determining piece rates "appropriate time shall be allowed for personal time, fatigue, and unavoidable delays. Generally, not less than 15% allowances (9 - 10 minutes per hour) shall be used in conducting time studies." The Wage and Hour Division will not accept a PF&D allowance that is less than 9 minutes per hour. A PF&D allowance is required only when establishing piece rates. The regulations do not require that an employer include a PF&D allowance when determining commensurate hourly wages to be paid to workers with disabilities under Section 14(c) of the FLSA.

**How does an employer incorporate a proper PF&D allowance into a piece rate?**

The PF&D allowance can be properly incorporated when determining the piece rates to be paid workers with disabilities in several different ways.

1. The simplest method is to conduct time studies of the standard setters (workers who do not have disabilities for the work performed) for 25 minutes, and then multiply the number of completed units by 2. Averaging those results will yield the standard - the number of units that an experienced worker without disabilities would be expected to produce in an hour with a properly computed 10-minute PF&D. The piece rate is then obtained by dividing the hourly prevailing wage rate for the work by the standard. For a 9-minute PF&D, the standard setters would be timed for 25½ minutes.

    - Example: Suppose that an employer must establish a piece rate to determine the wages due workers with disabilities paid special minimum wage who are employed to produce a specific product requiring hand assembly. The employer has already conducted a survey and determined that the prevailing wage rate for that work in the vicinity is $8.00 an hour. By conducting time studies of three experienced workers who do not have disabilities for the work being performed for 25 minutes and averaging the number of completed units produced, the employer determined that the average number of units produced in 25 minutes was 40. Therefore, the standard for this

job, using a 10-minute PF&D, is 80 units. The employer would then divide the prevailing wage rate ($8.00) by the standard (80 units) to determine a piece rate of $0.10.

2. An employer could apply an allowance factor to incorporate a proper PF&D. This is accomplished by multiplying the standard time it takes a worker who does not have a disability to produce one unit (or complete one cycle) by an allowance factor of 1.20 for a 10 minute PF&D or 1.1764705 for a 9-minute PF&D.

    - Example: Continuing the example above where the standard setters produced 40 units in 25 minutes, it can be determined that it took 37.5 seconds to produce a single unit. By multiplying 37.5 seconds by the allowance factor of 1.20, the time it took to produce a single unit is increased to 45.0 seconds - an amount that includes a 10-minute per hour PF&D. The number of seconds in an hour (3600) is then divided by 45.0 seconds to yield the number of units that a worker who is not disabled for the work being produced would be expected to produce in an hour that included a 10-minute PF&D. 3600 seconds/ 45 seconds = 80 units, the same number of units as determined in the example above. The employer would again divide the prevailing wage rate ($8.00) by the standard (80 units) to determine a piece rate of $0.10.
    - **Note: Some employers mistakenly believe that by multiplying the standard time by an allowance factor of 1.15, they are providing a PF&D allowance of 15%, or 9 minutes. This actually incorporates a PF&D of less than 9 minutes and is not in compliance with the regulations, 29 CFR Part 525. An allowance factor of at least 1.1764705 must be used to incorporate an acceptable PF&D when determining piece rates.**

3. An employer could multiply the number of units produced in 60 minutes by the worker who does not have a disability by an allowance percentage of 85% for a 9 minute PF&D or 83.3334% for a 10-minute PF&D. Example: Suppose the standard setters in the previous two examples had been timed for an hour and the average production was 96 units. If the employer multiplied the 96 units by the allowance percentage of 83.3334% (.833334) to allow for a 10-minute PF&D, the standard would be 80 units. The employer would again divide the prevailing wage rate ($8.00) by the standard (80 units) to determine a piece rate of $0.10.

**A word about the rules of ROUNDING when computing special minimum wages.**

Section 14(c) requires that workers with disabilities for the work being performed who receive special minimum wages must receive at least the commensurate wage for all hours worked. An employer who follows the normal business rules of rounding - rounding "up" only when the last decimal point is a five or higher - may actually be underpaying workers with disabilities. Although the underpayment per unit produced would be very small, the eventual back wage liability could be quite large considering the number of units that could be produced over an extended period of time by a number of different workers. This can be avoided by carrying computations out to the fifth decimal and then always rounding up to the fourth place. The Wage and Hour Division will accept the practice of carrying out computations to the fifth decimal point and then rounding up to the fourth decimal place as compliance when computing special minimum wages due workers with disabilities under Section 14(c).

An easy check to ensure that you have properly "rounded" when computing piece rates to be paid workers with disabilities under Section 14(c) is to multiply the piece rate by the standard. If this figure does not equal or exceed the prevailing wage rate, an error in the computation has occurred. In our example, $.010 multiplied by 80 units equals the prevailing wage rate of $8.00. Had that figure been less than $8.00 - such as $7.998 - the workers with disabilities would be receiving less than required by Section 14(c).

Sample Policy Statements

Most states have laws mandating a lunch break of at least 30 minutes. Employers should check their state agency for the laws in your area (see Chapter 7 on State Wage and Hour Laws in this manual.)

**Sample 1**

**Lunch Periods**

Employees are allowed a one-hour lunch break. Lunch breaks generally are taken between the hours of 11:00 a.m. and 2:00 p.m. on a staggered schedule so that your absence does not create a problem for co-workers or clients.

**Break Periods**

This Company does not provide for employees to break during production activities except for the above outlined lunch period.

Or

This Company provides for employees to break during production activities at the following times: *fill in appropriate times here.*

If employees have unexpected personal business to take care of, they must notify their direct supervisor to discuss time away from work and make provisions as necessary. Personal business should be conducted on the employee's own time.

Employees who do not adhere to the break policy will be subject to disciplinary action, including termination.

**Sample 2**

Supervisors or managers are responsible for scheduling lunch periods and/or breaks as described below:

**Mandatory Lunch Period**

Employees who work at least six consecutive hours shall be afforded a lunch period (meal break) of at least 30 minutes except in situations where shift coverage precludes such lunch breaks.

Employees who work a second consecutive shift shall be afforded a meal break after working four hours during the second shift.

The lunch period shall not be included in the count of hours worked per day, except when the agency head or designee has designated the lunch break as part of the work schedule. When employees are required to work during their lunch, that period shall be counted as time worked.

Example: When necessary to provide staffing for client services and care, the lunch period shall be considered time worked.

**Discretionary Breaks**

Agency managers may grant employees who work an eight-hour day or longer a maximum of one 15-minute rest break before and one 15-minute rest break after the required lunch period.

Rest breaks are included in the required hours of work per day.

**Impermissible Use of Breaks**

The lunch period and the break(s) must be taken separately and breaks may not be used to extend the lunch period. Except with prior approval, lunch breaks should not be adjusted to compensate for employees' late arrival or early departure, or to cover time off for other purposes.

Note: Managers reserve the right to determine when or if lunch periods may be used to compensate for an employee's late arrival or early departure.

**Sample 3**

Meal periods/Breaks

Employees working five (5) hours or more in a day shall be scheduled for a one-hour meal period, which shall be unpaid.

Employees are allowed one fifteen (15) minute break for each four (4) hour work segment. Break periods do not accrue.

Break time and meal periods cannot be used to arrive late or leave early.

Special consideration for extended break or lunch time may be made for extenuating circumstances at the discretion of the director.

All breaks must be taken away from the employee's work area.

**Sample 4**

Rest and Meal Periods

If you are a full-time nonexempt employee, you will have 2 rest periods of 15 minutes in length each workday. When possible, rest periods will be scheduled in the middle of work periods. Because rest time is counted and paid as time you worked, you must not be absent from your workstation longer than the rest period allows.

All full-time employees will have one meal period of 30 minutes in length each workday that they work more than 4 hours. If an employee is working only 4 hours, they are required to take

one 15 minute break during that time. The employees that are working on any given day should rotate a lunch break among themselves. When taking a lunch break or 15 minute break, keep in mind any staffing needs at the desk during that time. During meal periods, you are not subject to any work responsibilities or restrictions. You will not be paid for meal period time.

Recordkeeping Requirements

The FLSA requires employers to keep records on wages, hours worked and other items, as specified in Department of Labor regulations (29 CFR Part 516). Most of the information is generally maintained by employers in ordinary business practice and in compliance with other laws and regulations.

Every covered employer must keep certain records for each non-exempt worker. The FLSA doesn't require a particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. The law requires this information to be accurate. With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following is a list of the 14 essential records that an employer must maintain:

15. Employee's full name and social security number
16. Address, including zip code
17. Birth date, if younger than 19
18. Gender and occupation
19. Time and day of week when the employee's workweek begins
20. Hours worked each day
21. Total hours worked each workweek
22. Basis on which employee's wages are paid (e.g., "$9 per hour," "$440 a week")
23. Regular hourly pay rate
24. Total daily or weekly straight-time earnings
25. Total overtime earnings for the workweek
26. All additions to or deductions from the employee's wages
27. Total wages paid each pay period
28. Date of payment and the pay period covered by the payment

Once all the required information above has been gathered, a common question that employers ask is, "How long do these records need to be retained?" The law requires that each employer preserve their payroll records, collective bargaining agreements, sales and purchase records for *at least three years*. Records on which wage computations are based should be retained for two years, such as time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages. These records must be open for inspection by representatives of the WHD, who may ask the employer to make extensions, computations, or transcriptions. The records may be kept at the place of employment or in a central records office.

A follow-up question that employers frequently ask is: "What about timekeeping?" The FLSA allows for some flexibility here, as employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

After the employer has gathered the essential records, placed them in a desirable format and employs a timekeeping method that ensures accuracy, it is important for them to consider how the FLSA defines the terms "workweek" and "hours worked" so that they pass any potential

audit from the WHD. As defined in the law, a "workweek" is a period of 168 hours during 7 consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day, as established by the employer. Generally, for purposes of minimum wage and overtime payment, each workweek stands alone, meaning there can be no averaging of 2 or more workweeks. This is because employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis. Since covered employees must be paid for all hours worked in a workweek, the FLSA defines the term "hours worked" as "all of the time that an employee must be on duty and on the employer's premises or at any other prescribed place of work, from the beginning of the first principal activity of the work day to the end of the last principal work activity of the workday."

The same WHD representatives who inspect employers for the accuracy of their recordkeeping policies are the same inspectors who are able to cite employers for any violations of the FLSA's provisions. Employers who are mindful of the 14 essential records they must maintain and how to maintain them will not only stand the best chance of passing a WHD audit, but will also avoid any civil monetary penalties stemming from FLSA recordkeeping violations.

**Insignificant Periods of Time**

In recording working time under the act, infrequent and insignificant periods of time beyond the scheduled working hours, which cannot as a practical matter be precisely recorded for payroll purposes, may be disregarded. The courts have held that such periods of time are de minimis (insignificant). This rule applies only where there are uncertain and indefinite periods of time involved, a few seconds or minutes in duration, and where the failure to count such time is justified by industrial realities. As noted below, an employer may not arbitrarily fail to count any part, however small, of working time that can be practically ascertained.

For example, after clocking in, the employer assigns their employee to another job. He or she transported his or her tools to the new job area and then informed that the foreman that he or she was ill and went home without doing any additional work or clocking out. The time spent transporting the tools would be considered de minimis or insignificant because it was limited to this one time only.

The employer must count as hours worked any part, however small, of an employee's fixed or regular working time or identifiable periods of time he or she is regularly required to spend on duties assigned to him or her.

This policy is one that must be applied with common sense recognizing the practical realities of recording identifiable work time. Setting an artificial time limit is not sufficient. One must consider how frequently the activity is performed and whether the activity is actually part of the work the employee was hired to do.

**Use of Time Clocks**

Time clocks are not required under the FLSA. In those cases where time clocks are used, if an employee voluntarily comes in before his or her regular starting time or remains after quitting time, he or she does not have to be paid for such periods provided, of course, that the employee

does not do any work during this time. Early or late punching is not hours worked when no work is done.

Likewise, minor differences between the clock records and actual hours worked cannot ordinarily be avoided since all employees cannot clock in or out at precisely the same time. Major discrepancies should be discouraged, however, since doubt is raised as to the accuracy of the record of hours actually worked.

In some industries, particularly where time clocks are used, there has been the practice for many years of recording the employee's starting and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, these arrangements average out so all of the time actually worked by the employee is properly counted and the employee is fully compensated for all the time actually worked. Such practices of recording working time are acceptable, provided they do not result, over a period of time, in failure to count as hours worked all the time the employees have actually worked.

**Special Minimum Wage Based on a Disability**

In addition to the recordkeeping requirements imposed on all employers subject to the FLSA, those paying special minimum wages to workers with disabilities under Section 14(c) must also maintain records regarding the disabilities of the workers, prevailing wage surveys, work measurements, and individual productivity.

Every employer, or where appropriate (in the case of records verifying the workers' disabilities) the referring agency or facility, of workers employed under special minimum wage certificates shall maintain and have available for inspection records indicating:

(a) Verification of the workers' disabilities;

(b) Evidence of the productivity of each worker with a disability gathered on a continuing basis or at periodic intervals (not to exceed six months in the case of employees paid hourly wage rates);

(c) The prevailing wages paid workers not disabled for the job performed who are employed in industry in the vicinity for essentially the same type of work using similar methods and equipment as that used by each worker with disabilities employed under a special minimum wage certificate (see also §525.10(b) and (d));

(d) The production standards and supporting documentation for non-disabled workers for each job being performed by workers with disabilities employed under special certificates; and

(e) The records required under all of the applicable provisions of Title 29 Section 516, except that any provision pertaining to homeworker handbooks shall not be applicable to workers with disabilities who are employed by a recognized nonprofit rehabilitation facility and working in or about a home, apartment, tenement, or room in a residential establishment. (See §525.15) Records required by this section shall be maintained and preserved for the periods specified in §516.

# Breaks, Meals and Special Employment Self-Audit Checklist

*The following checklist may be utilized to assist in compliance with special minimum wage rates for disabled employees as well as state mandated break and meal periods:*

- ❑ Where mandated by state law, employees are given the required time for both rest and meal periods.
- ❑ Pursuant to the Patient Protection and Affordable Care Act, reasonable breaks are provided to employees to express breast milk for her nursing child for one year after the child's birth.
- ❑ Certificates have been obtained from the Wage and Hour Division of the Department of Labor for any disabled employee being paid special wages under the FLSA.
- ❑ Commensurate wage rates for disable employees have been computed utilizing a time-based measurement and prevailing wage survey.
- ❑ Each worker with a disability receiving a special minimum wage under FLSA Section 14(c), and, where appropriate, the parent or guardian of such worker, has been informed orally and in writing by the employer of the terms of the certificate under which such worker is employed.
- ❑ Both the certificate and the Wage and Hour Division poster, Notice to Workers with Disabilities Paid at Special Minimum Wages, is prominently displayed in the workplace.

*The following accurate records are maintained for disabled employees earning a special minimum wage:*

- ❑ Verification of the workers' disabilities;
- ❑ Evidence of the productivity of each worker with a disability gathered on a continuing basis or at periodic intervals (not to exceed six months in the case of employees paid hourly wage rates);
- ❑ The prevailing wages paid workers not disabled for the job performed who are employed in industry in the vicinity for essentially the same type of work using similar methods and equipment as that used by each worker with disabilities employed under a special minimum wage certificate (see also §525.10(b) and (d));
- ❑ The production standards and supporting documentation for nondisabled workers for each job being performed by workers with disabilities employed under special certificates; and
- ❑ The records required under all of the applicable provisions of Title 29 Section 516.

Audit Conducted by _____ Date _____

Signature _____

# Documentation Forms

# FairPay Overtime Rules Exemption Checklist

Employee Name _____

Job Title _____ Date _____

*Instructions: Fill out this form to verify the exempt status of all employees classified as "exempt" from overtime regulations effective August 23rd, 2004. Thereafter, use this form for all new hires to determine if they qualify for an exemption. Certain key terms in the duties tests are italicized. It is critical for employers to understand these key terms. Refer to your "FLSA FairPay Overtime Rules Compliance Guide" or the complete text of the FairPay overtime regulations for definitions, analysis, and application of these terms.*

## Section I – Salary Basis (Subpart G)

❑ Yes ❑ No (1) Is the employee paid on a salary basis at a rate of at least $455 per week ($23,660 per year), exclusive of board, meals, and lodging?

❑ Yes ❑ No (2) Is the employee a computer professional compensated at an hourly rate of at least $27.63 per hour?

❑ Yes ❑ No (3) Does the employee earn over $100,000 annually?

- If you answered "NO" to question 1, the employee does not meet the minimum salary requirement and is automatically eligible for overtime pay.
- If you answered "YES" to question 1, proceed to Section II of this form: "Executive, Administrative, Professional & Outside Sales Duties Tests".
- If you answered "YES" to questions 1 and 2, proceed to Section III of this form: "Computer Employee Exemption."
- If you answered "YES" to question 3, proceed to Section IV of this form: "Highly Compensated Employees."

## Section II – Executive, Administrative, Professional & Outside Sales Duties Tests

**Executive Exemption (Subpart B)**

❑ Yes ❑ No (1) Is the employee's primary duty the management of the enterprise or of a customarily recognized department or subdivision?

❑ Yes ❑ No (2) Does the *employee customarily and regularly* direct the work of two or more other employees?

❑ Yes ❑ No (3) Does the employee have the authority to hire or fire other employees? If not, are their suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees given *"particular weight"*?

- If you answered "NO" to any of these three questions, the employee does not qualify for the executive exemption. Proceed to the next duties test.
- If you answered "YES" to all three questions, the employee qualifies for the exemption as a "bona fide executive employee."

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**Administrative Exemption (Subpart C)**

❑ Yes ❑ No (1) Is the employee's *primary duty* the performance of office or non-manual work *directly related to the management or general business operations* of the employer or the employer's customers?

❑ Yes ❑ No (2) Does the employee's primary duty include the exercise of *discretion and independent judgment* with respect to matters of significance?

❑ Yes ❑ No (3) Is the employee employed in an educational establishment or department or subdivision thereof?

- If you answered "NO" to all of these questions, the employee does not qualify for the administrative exemption. Proceed to the next duties test.
- If you answered "NO" to questions 2 and 3, the employee does not qualify for the administrative exemption. Proceed to the next duties test.
- If you answered "YES" to questions 1 and 2, the employee qualifies for the general administrative exemption.
- If you answered "YES" to questions 1 or 2 and "YES" to question 3 the employee qualifies as an exempt academic administrative employee.

**Professional Exemption (Subpart D)**

❑ Yes ❑ No (1) **Learned Professional -** Does the employee's *primary duty* require knowledge of an advanced type in a field of science or learning customarily acquired by a *prolonged course of specialized intellectual instruction or a combination of intellectual instruction and work experience?*

❑ Yes ❑ No (2) **Creative Professional** - Does the employee's *primary duty* require invention, imagination, originality or talent in a recognized field of artistic or creative endeavor?

❑ Yes ❑ No (3) **Teachers** - Is the employee's *primary duty* teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge in an educational establishment where he/she is employed?

❑ Yes ❑ No (4) **Doctors and Lawyers** - Does the employee practice law or medicine and hold a valid license or certificate permitting him/her to practice law or medicine?

- If you answered "NO" to all of these questions, the employee does not qualify for the professional exemption.
- If you answered "YES" to question 1, the employee qualifies for the professional exemption as a bona fide learned professional.
- If you answered "YES" to question 2, the employee qualifies for the professional exemption as a bona fide creative professional.
- If you answered "YES" to question 3, the employee qualifies for the exemption as a teacher.
- If you answered "YES" to question 4, the employee qualifies for the exemption as a doctor or lawyer.

**Outside Sales Exemption (Subpart F)**

❑ Yes ❑ No (1) Is the employee's *primary duty* making sales or obtaining orders or contracts for services or for the use of facilities?

❑ Yes ❑ No (2) Is the employee *customarily and regularly* engaged away from your place of business in performing her primary duty?

- If you answered "NO" to either question, the employee is not eligible for the outside sales exemption.
- If you answered "YES" to both questions, the employee qualifies for the exemption as an outside sales employee.

## Section III – Computer Employee Exemption (Subpart E)

❑ Yes ❑ No (1) Is the employee a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the field of computers?

❑ Yes ❑ No (2) Does the employee's *primary duty* consist of any of the following?

a. Application of systems analysis techniques and procedures to determine the specifications of systems, hardware or software.
b. Design, development, analysis, creation, testing, documentation, or modification of computer systems or programs
c. The design, testing, creation, documentation or modification of computer programs related to machine operating systems.
d. Any combination of a, b, and c.

- If you answered "YES" to questions 1 and 2, the employee is an exempt computer professional.
- If you answered "NO" to either question, the employee is not an exempt computer employee.

## Section IV – Highly Compensated Employees (§541.601)

❑ Yes ❑ No (1) Does the employee perform office or non-manual work?

❑ Yes ❑ No (2) Does the employee perform at least one exempt duty under the Administrative, Executive, or Professional criteria?

- If you answered "NO" to either question, the employee does not qualify for the highly compensated employee exemption.
- If you answered "YES" to both questions, the employee qualifies for the highly compensated employee exemption.

This form completed by:

Supervisor or HR Representative Signature _____ Date _____

# FairPay Overtime Rules Exemption Checklist

Employee Name _____

Job Title _____ Date _____

*Instructions: Fill out this form to verify the exempt status of all employees classified as "exempt" from overtime regulations effective August 23rd, 2004. Thereafter, use this form for all new hires to determine if they qualify for an exemption. Certain key terms in the duties tests are italicized. It is critical for employers to understand these key terms. Refer to your "FLSA FairPay Overtime Rules Compliance Guide" or the complete text of the FairPay overtime regulations for definitions, analysis, and application of these terms.*

## Section I – Salary Basis (Subpart G)

❑ Yes ❑ No (1) Is the employee paid on a salary basis at a rate of at least $455 per week ($23,660 per year), exclusive of board, meals, and lodging?

❑ Yes ❑ No (2) Is the employee a computer professional compensated at an hourly rate of at least $27.63 per hour?

❑ Yes ❑ No (3) Does the employee earn over $100,000 annually?

- If you answered "NO" to question 1, the employee does not meet the minimum salary requirement and is automatically eligible for overtime pay.
- If you answered "YES" to question 1, proceed to Section II of this form: "Executive, Administrative, Professional & Outside Sales Duties Tests".
- If you answered "YES" to questions 1 and 2, proceed to Section III of this form: "Computer Employee Exemption."
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❑ Yes ❑ No (3) Does the employee have the authority to hire or fire other employees? If not, are their suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees given *"particular weight"*?

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**Administrative Exemption (Subpart C)**

❑ Yes ❑ No (1) Is the employee's *primary duty* the performance of office or non-manual work *directly related to the management or general business operations* of the employer or the employer's customers?

❑ Yes ❑ No (2) Does the employee's primary duty include the exercise of *discretion and independent judgment* with respect to matters of significance?

❑ Yes ❑ No (3) Is the employee employed in an educational establishment or department or subdivision thereof?

- If you answered "NO" to all of these questions, the employee does not qualify for the administrative exemption. Proceed to the next duties test.
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❑ Yes ❑ No (2) Is the employee *customarily and regularly* engaged away from your place of business in performing her primary duty?

- If you answered "NO" to either question, the employee is not eligible for the outside sales exemption.
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a. Application of systems analysis techniques and procedures to determine the specifications of systems, hardware or software.
b. Design, development, analysis, creation, testing, documentation, or modification of computer systems or programs
c. The design, testing, creation, documentation or modification of computer programs related to machine operating systems.
d. Any combination of a, b, and c.

- If you answered "YES" to questions 1 and 2, the employee is an exempt computer professional.
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❑ Yes ❑ No (2) Does the employee perform at least one exempt duty under the Administrative, Executive, or Professional criteria?

- If you answered "NO" to either question, the employee does not qualify for the highly compensated employee exemption.
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This form completed by:

Supervisor or HR Representative Signature _____ Date _____

# FairPay Overtime Rules Exemption Checklist

Employee Name _____

Job Title _____ Date _____

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❑ Yes ❑ No (2) Is the employee a computer professional compensated at an hourly rate of at least $27.63 per hour?

❑ Yes ❑ No (3) Does the employee earn over $100,000 annually?

- If you answered "NO" to question 1, the employee does not meet the minimum salary requirement and is automatically eligible for overtime pay.
- If you answered "YES" to question 1, proceed to Section II of this form: "Executive, Administrative, Professional & Outside Sales Duties Tests".
- If you answered "YES" to questions 1 and 2, proceed to Section III of this form: "Computer Employee Exemption."
- If you answered "YES" to question 3, proceed to Section IV of this form: "Highly Compensated Employees."

## Section II – Executive, Administrative, Professional & Outside Sales Duties Tests

**Executive Exemption (Subpart B)**

❑ Yes ❑ No (1) Is the employee's primary duty the management of the enterprise or of a customarily recognized department or subdivision?

❑ Yes ❑ No (2) Does the *employee customarily and regularly* direct the work of two or more other employees?

❑ Yes ❑ No (3) Does the employee have the authority to hire or fire other employees? If not, are their suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees given *"particular weight"*?

- If you answered "NO" to any of these three questions, the employee does not qualify for the executive exemption. Proceed to the next duties test.
- If you answered "YES" to all three questions, the employee qualifies for the exemption as a "bona fide executive employee."

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**Administrative Exemption (Subpart C)**

❑ Yes ❑ No (1) Is the employee's *primary duty* the performance of office or non-manual work *directly related to the management or general business operations* of the employer or the employer's customers?

❑ Yes ❑ No (2) Does the employee's primary duty include the exercise of *discretion and independent judgment* with respect to matters of significance?

❑ Yes ❑ No (3) Is the employee employed in an educational establishment or department or subdivision thereof?

- If you answered "NO" to all of these questions, the employee does not qualify for the administrative exemption. Proceed to the next duties test.
- If you answered "NO" to questions 2 and 3, the employee does not qualify for the administrative exemption. Proceed to the next duties test.
- If you answered "YES" to questions 1 and 2, the employee qualifies for the general administrative exemption.
- If you answered "YES" to questions 1 or 2 and "YES" to question 3 the employee qualifies as an exempt academic administrative employee.

**Professional Exemption (Subpart D)**

❑ Yes ❑ No (1) **Learned Professional -** Does the employee's *primary duty* require knowledge of an advanced type in a field of science or learning customarily acquired by a *prolonged course of specialized intellectual instruction or a combination of intellectual instruction and work experience?*

❑ Yes ❑ No (2) **Creative Professional** - Does the employee's *primary duty* require invention, imagination, originality or talent in a recognized field of artistic or creative endeavor?

❑ Yes ❑ No (3) **Teachers** - Is the employee's *primary duty* teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge in an educational establishment where he/she is employed?

❑ Yes ❑ No (4) **Doctors and Lawyers** - Does the employee practice law or medicine and hold a valid license or certificate permitting him/her to practice law or medicine?

- If you answered "NO" to all of these questions, the employee does not qualify for the professional exemption.
- If you answered "YES" to question 1, the employee qualifies for the professional exemption as a bona fide learned professional.
- If you answered "YES" to question 2, the employee qualifies for the professional exemption as a bona fide creative professional.
- If you answered "YES" to question 3, the employee qualifies for the exemption as a teacher.
- If you answered "YES" to question 4, the employee qualifies for the exemption as a doctor or lawyer.

**Outside Sales Exemption (Subpart F)**

❑ Yes ❑ No (1) Is the employee's *primary duty* making sales or obtaining orders or contracts for services or for the use of facilities?

❑ Yes ❑ No (2) Is the employee *customarily and regularly* engaged away from your place of business in performing her primary duty?

- If you answered "NO" to either question, the employee is not eligible for the outside sales exemption.
- If you answered "YES" to both questions, the employee qualifies for the exemption as an outside sales employee.

## Section III – Computer Employee Exemption (Subpart E)

❑ Yes ❑ No (1) Is the employee a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the field of computers?

❑ Yes ❑ No (2) Does the employee's *primary duty* consist of any of the following?

a. Application of systems analysis techniques and procedures to determine the specifications of systems, hardware or software.
b. Design, development, analysis, creation, testing, documentation, or modification of computer systems or programs
c. The design, testing, creation, documentation or modification of computer programs related to machine operating systems.
d. Any combination of a, b, and c.

- If you answered "YES" to questions 1 and 2, the employee is an exempt computer professional.
- If you answered "NO" to either question, the employee is not an exempt computer employee.

## Section IV – Highly Compensated Employees (§541.601)

❑ Yes ❑ No (1) Does the employee perform office or non-manual work?

❑ Yes ❑ No (2) Does the employee perform at least one exempt duty under the Administrative, Executive, or Professional criteria?

- If you answered "NO" to either question, the employee does not qualify for the highly compensated employee exemption.
- If you answered "YES" to both questions, the employee qualifies for the highly compensated employee exemption.

This form completed by:

Supervisor or HR Representative Signature _____ Date _____

# FairPay Overtime Rules Exemption Checklist

Employee Name _____

Job Title _____ Date _____

*Instructions: Fill out this form to verify the exempt status of all employees classified as "exempt" from overtime regulations effective August 23rd, 2004. Thereafter, use this form for all new hires to determine if they qualify for an exemption. Certain key terms in the duties tests are italicized. It is critical for employers to understand these key terms. Refer to your "FLSA FairPay Overtime Rules Compliance Guide" or the complete text of the FairPay overtime regulations for definitions, analysis, and application of these terms.*

## Section I – Salary Basis (Subpart G)

❑ Yes ❑ No (1) Is the employee paid on a salary basis at a rate of at least $455 per week ($23,660 per year), exclusive of board, meals, and lodging?

❑ Yes ❑ No (2) Is the employee a computer professional compensated at an hourly rate of at least $27.63 per hour?

❑ Yes ❑ No (3) Does the employee earn over $100,000 annually?

- If you answered "NO" to question 1, the employee does not meet the minimum salary requirement and is automatically eligible for overtime pay.
- If you answered "YES" to question 1, proceed to Section II of this form: "Executive, Administrative, Professional & Outside Sales Duties Tests".
- If you answered "YES" to questions 1 and 2, proceed to Section III of this form: "Computer Employee Exemption."
- If you answered "YES" to question 3, proceed to Section IV of this form: "Highly Compensated Employees."

## Section II – Executive, Administrative, Professional & Outside Sales Duties Tests

**Executive Exemption (Subpart B)**

❑ Yes ❑ No (1) Is the employee's primary duty the management of the enterprise or of a customarily recognized department or subdivision?

❑ Yes ❑ No (2) Does the *employee customarily and regularly* direct the work of two or more other employees?

❑ Yes ❑ No (3) Does the employee have the authority to hire or fire other employees? If not, are their suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees given *"particular weight"*?

- If you answered "NO" to any of these three questions, the employee does not qualify for the executive exemption. Proceed to the next duties test.
- If you answered "YES" to all three questions, the employee qualifies for the exemption as a "bona fide executive employee."

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**Administrative Exemption (Subpart C)**

❑ Yes ❑ No (1) Is the employee's *primary duty* the performance of office or non-manual work *directly related to the management or general business operations* of the employer or the employer's customers?

❑ Yes ❑ No (2) Does the employee's primary duty include the exercise of *discretion and independent judgment* with respect to matters of significance?

❑ Yes ❑ No (3) Is the employee employed in an educational establishment or department or subdivision thereof?

- If you answered "NO" to all of these questions, the employee does not qualify for the administrative exemption. Proceed to the next duties test.
- If you answered "NO" to questions 2 and 3, the employee does not qualify for the administrative exemption. Proceed to the next duties test.
- If you answered "YES" to questions 1 and 2, the employee qualifies for the general administrative exemption.
- If you answered "YES" to questions 1 or 2 and "YES" to question 3 the employee qualifies as an exempt academic administrative employee.

**Professional Exemption (Subpart D)**

❑ Yes ❑ No (1) **Learned Professional -** Does the employee's *primary duty* require knowledge of an advanced type in a field of science or learning customarily acquired by a *prolonged course of specialized intellectual instruction or a combination of intellectual instruction and work experience?*

❑ Yes ❑ No (2) **Creative Professional** - Does the employee's *primary duty* require invention, imagination, originality or talent in a recognized field of artistic or creative endeavor?

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**Outside Sales Exemption (Subpart F)**

❑ Yes ❑ No (1) Is the employee's *primary duty* making sales or obtaining orders or contracts for services or for the use of facilities?

❑ Yes ❑ No (2) Is the employee *customarily and regularly* engaged away from your place of business in performing her primary duty?

- If you answered "NO" to either question, the employee is not eligible for the outside sales exemption.
- If you answered "YES" to both questions, the employee qualifies for the exemption as an outside sales employee.

## Section III – Computer Employee Exemption (Subpart E)

❑ Yes ❑ No (1) Is the employee a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the field of computers?

❑ Yes ❑ No (2) Does the employee's *primary duty* consist of any of the following?

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## Section IV – Highly Compensated Employees (§541.601)

❑ Yes ❑ No (1) Does the employee perform office or non-manual work?

❑ Yes ❑ No (2) Does the employee perform at least one exempt duty under the Administrative, Executive, or Professional criteria?

- If you answered "NO" to either question, the employee does not qualify for the highly compensated employee exemption.
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This form completed by:

Supervisor or HR Representative Signature _____ Date _____

# FairPay Overtime Rules Exemption Checklist

Employee Name _____

Job Title _____ Date _____

*Instructions: Fill out this form to verify the exempt status of all employees classified as "exempt" from overtime regulations effective August 23rd, 2004. Thereafter, use this form for all new hires to determine if they qualify for an exemption. Certain key terms in the duties tests are italicized. It is critical for employers to understand these key terms. Refer to your "FLSA FairPay Overtime Rules Compliance Guide" or the complete text of the FairPay overtime regulations for definitions, analysis, and application of these terms.*

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- If you answered "YES" to questions 1 and 2, proceed to Section III of this form: "Computer Employee Exemption."
- If you answered "YES" to question 3, proceed to Section IV of this form: "Highly Compensated Employees."

## Section II – Executive, Administrative, Professional & Outside Sales Duties Tests

**Executive Exemption (Subpart B)**

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**Administrative Exemption (Subpart C)**

❑ Yes ❑ No (1) Is the employee's *primary duty* the performance of office or non-manual work *directly related to the management or general business operations* of the employer or the employer's customers?

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❑ Yes ❑ No (1) Is the employee's *primary duty* making sales or obtaining orders or contracts for services or for the use of facilities?

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❑ Yes ❑ No (1) Does the employee perform office or non-manual work?

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This form completed by:

Supervisor or HR Representative Signature _____ Date _____

# Job Duties Analysis Form

Employee Name _____ Title _____

Department _____ Supervisor _____

The purpose of this form is to create a record of your current job duties (including those not listed in your job description) and the factors that influence your performance of these duties. This record will help the company ensure that job descriptions are accurate and up-to-date. Job descriptions may be used to ensure compliance with federal employment laws, including the Fair Labor Standards Act, the Americans with Disabilities Act, and the Equal Pay Act.

**Instructions:** Fill out each section of this form with specific information about your regular job duties, any post-secondary school education or training you have received, and your working conditions. You may wish to keep a log of your daily activities to help you complete this form. If you need additional assistance, please see your supervisor or manager.

## Purpose

## Essential Responsibilities

## Management or Team Leader Responsibilities

 

## Routine Decision Making

## Formal Training

## Formal Policy Setting Responsibilities

## Knowledge, Skill and Abilities

## Working Conditions

By signing below, I hereby certify that the duties and time estimates included on this form are accurate and are indicative of an average workweek.

Employee Signature _____ Date _____

Supervisor's Signature _____ Date _____

# Job Duties Analysis Form

Employee Name _____ Title _____

Department _____ Supervisor _____

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By signing below, I hereby certify that the duties and time estimates included on this form are accurate and are indicative of an average workweek.

Employee Signature _____ Date _____

Supervisor's Signature _____ Date _____

# Payroll/Employment Status Change Notice

Date _____ Routing ❑ Payroll ❑ Human Resources ❑ Other

Employee _____
Last First Middle

SSN ___ — ___ — ___ Dept. _____

Payroll/Employee number _____

## Change(s)

❑ Department ❑ Job Title ❑ Shift

❑ Salary/Wage ❑ Service Date ❑ Other _____

❑ Leave of Absence Start Date _____ Return Date _____

| Type of Change | From | To |
|---|---|---|
| | | |
| | | |
| | | |

## Reason for Change(s)

❑ Promotion/Demotion ❑ Family Leave ❑ Medical Leave

❑ Disability ___Long ___Short Term ❑ Service/Merit Increase ❑ New Hire/Rehire

❑ Discharge/Layoff/Resignation ❑ Probation Complete ❑ Transfer

❑ Retirement ❑ Other

## Comments

 

# Payroll/Employment Status Change Notice

Date _____ Routing ❑ Payroll ❑ Human Resources ❑ Other

Employee _____
Last First Middle

SSN ___ — ___ — ___ Dept. _____

Payroll/Employee number _____

## Change(s)

❑ Department ❑ Job Title ❑ Shift

❑ Salary/Wage ❑ Service Date ❑ Other _____

❑ Leave of Absence Start Date _____ Return Date _____

| Type of Change | From | To |
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# Payroll/Employment Status Change Notice

Date _____ Routing ❑ Payroll ❑ Human Resources ❑ Other

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❑ Salary/Wage ❑ Service Date ❑ Other _____

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| Type of Change | From | To |
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Last First Middle

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❑ Discharge/Layoff/Resignation ❑ Probation Complete ❑ Transfer

❑ Retirement ❑ Other

## Comments

 

# Employee Action Request

Effective Date _____ Employee Name _____

New Name _____ New Address (Street and Apt. #) _____

New Home Phone _____ New Address (City, State, Zip) _____

**Request for Time Off:**

❑ Paid ❑ Unpaid

**Reason:**

❑ Vacation (new form required for each payroll period)
❑ Jury Duty or Court Appearance
❑ Sick Time
❑ Floating Holiday
❑ Bereavement Time
❑ School Related Leave
❑ Domestic Violence & Sexual Assault Victims Leave
❑ Crime Victims Leave
❑ Other (attach proper documentation if available)

Begin Date _____ End Date _____ Total Hours Requested _____

Purpose of Request _____

**New Marital Status:** ❑ Divorced ❑ Married ❑ Separated ❑ Single

**New Emergency Contact:**

Name _____ Relationship _____

Address _____ Home Phone _____ Work Phone _____

**New Dependent:**

Name _____ Social Security # _____ Relationship _____

Gender ❑ M ❑ F Date of Birth _____ Student Status ❑ Not a student ❑ Full time student ❑ Part time student

Employee's Signature _____ Date _____

Supervisor's Signature _____ Date _____

# Employee Action Request

Effective Date _____ Employee Name _____

New Name _____ New Address (Street and Apt. #) _____

New Home Phone _____ New Address (City, State, Zip) _____

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Name _____ Relationship _____

Address _____ Home Phone _____ Work Phone _____

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Name _____ Social Security # _____ Relationship _____

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❑ Domestic Violence & Sexual Assault Victims Leave
❑ Crime Victims Leave
❑ Other (attach proper documentation if available)

Begin Date _____ End Date _____ Total Hours Requested _____

Purpose of Request _____

**New Marital Status:** ❑ Divorced ❑ Married ❑ Separated ❑ Single

**New Emergency Contact:**

Name _____ Relationship _____

Address _____ Home Phone _____ Work Phone _____

**New Dependent:**

Name _____ Social Security # _____ Relationship _____

Gender ❑ M ❑ F Date of Birth _____ Student Status ❑ Not a student ❑ Full time student ❑ Part time student

Employee's Signature _____ Date _____

Supervisor's Signature _____ Date _____

# Employee Action Request

Effective Date _____ Employee Name _____

New Name _____ New Address (Street and Apt. #) _____

New Home Phone _____ New Address (City, State, Zip) _____

**Request for Time Off:**

❑ Paid ❑ Unpaid

**Reason:**

❑ Vacation (new form required for each payroll period)
❑ Jury Duty or Court Appearance
❑ Sick Time
❑ Floating Holiday
❑ Bereavement Time
❑ School Related Leave
❑ Domestic Violence & Sexual Assault Victims Leave
❑ Crime Victims Leave
❑ Other (attach proper documentation if available)

Begin Date _____ End Date _____ Total Hours Requested _____

Purpose of Request _____

**New Marital Status:** ❑ Divorced ❑ Married ❑ Separated ❑ Single

**New Emergency Contact:**

Name _____ Relationship _____

Address _____ Home Phone _____ Work Phone _____

**New Dependent:**

Name _____ Social Security # _____ Relationship _____

Gender ❑ M ❑ F Date of Birth _____ Student Status ❑ Not a student ❑ Full time student ❑ Part time student

Employee's Signature _____ Date _____

Supervisor's Signature _____ Date _____

# Employee Action Request

Effective Date _____ Employee Name _____

New Name _____ New Address (Street and Apt. #) _____

New Home Phone _____ New Address (City, State, Zip) _____

**Request for Time Off:**

❑ Paid ❑ Unpaid

**Reason:**

❑ Vacation (new form required for each payroll period)
❑ Jury Duty or Court Appearance
❑ Sick Time
❑ Floating Holiday
❑ Bereavement Time
❑ School Related Leave
❑ Domestic Violence & Sexual Assault Victims Leave
❑ Crime Victims Leave
❑ Other (attach proper documentation if available)

Begin Date _____ End Date _____ Total Hours Requested _____

Purpose of Request _____

**New Marital Status:** ❑ Divorced ❑ Married ❑ Separated ❑ Single

**New Emergency Contact:**

Name _____ Relationship _____

Address _____ Home Phone _____ Work Phone _____

**New Dependent:**

Name _____ Social Security # _____ Relationship _____

Gender ❑ M ❑ F Date of Birth _____ Student Status ❑ Not a student ❑ Full time student ❑ Part time student

Employee's Signature _____ Date _____

Supervisor's Signature _____ Date _____

# State Wage & Hour Laws

# Minimum Wage Laws by State (Effective Date: 01/01/2011)

| State | Basic Minimum Rate (per hour) | Premium Pay after Designated Hours (Daily) | Premium Pay after Designated Hours (Weekly) | Special Considerations |
|---|---|---|---|---|
| **Alabama** No State Min Wage | | | | |
| **Alaska** | $7.75 | 8 | 40 | |
| Under a voluntary flexible work hour plan approved by the Alaska Department of Labor, a 10 hour day, 40 hour workweek may be instituted with premium pay after 10 hours a day instead of after 8 hours. The premium overtime pay requirement on either a daily or weekly basis is not applicable to employers of fewer than 4 employees. | | | | |
| **Arizona** | $7.35 | | | Rate increased annually based on cost of living |
| **Arkansas** | $6.25 | NA | 40 | Applicable to employers with 4+ employees |
| **California** | $8.00 | 8 (over 12 double time) | 40; on 7th day: First 8 hours (time and half) Over 8 hours on 7th day (double time) | |
| Any work in excess of eight hours in one workday and any work in excess of 40 hours in one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be at the rate of one and one-half times the regular rate of pay. Any work in excess of 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek shall be paid no less than twice the regular rate of pay. California Labor Code section 310. Exceptions apply to an employee working pursuant to an alternative workweek adopted pursuant to applicable Labor Code sections and for time spent commuting. (See Labor Code sections 510 for exceptions). | | | | |
| **Colorado** | $7.36 | 12 | 40 | Rate adjusted annually based on cost of living |
| Minimum wage rate and overtime provisions applicable to retail and service, commercial support service, food and beverage, and health and medical industries. | | | | |
| **Connecticut** | $8.25 | | 40 | |
| In restaurants and hotel restaurants, for the 7th consecutive day of work, premium pay is required at time and one half the minimum rate. The Connecticut minimum wage rate automatically increases to 1/2 of 1 percent above the rate set in the Fair Labor Standards Act if the Federal minimum wage rate equals or becomes higher than the State minimum. | | | | |
| **Delaware** | $7.25 | | | |
| The Delaware minimum wage is automatically replaced with the Federal minimum wage rate if it is higher than the State minimum. | | | | |
| **District of Columbia** | $8.25 | | 40 | |
| In the District of Columbia, the rate is automatically set at $1 above the Federal minimum wage rate if the District of Columbia rate is lower. | | | | |
| **Florida** | $7.25 | | NA | Rate increased annually based on cost of living |
| **Georgia** | $5.15 | | | Applicable to employers with 6+ employees |
| The State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act when the Federal rate is greater than the State rate. | | | | |
| **Guam** | $7.25 | | 40 | |
| **Hawaii** | $7.25 | | 40 | |

| | | | | |
|---|---|---|---|---|
| An employee earning a guaranteed monthly compensation of $2,000 or more is exempt from the State minimum wage and overtime law. The State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act unless the State wage rate is higher than the Federal. | | | | |
| **Idaho** | $7.25 | | | |
| **Illinois** | $8.25 | | 40 | Applicable to employers with 4+ employees excluding family members |
| **Indiana** | $7.25 | | 40 | Applicable to employers with 2+ employees |
| **Iowa** | $7.25 | | | |
| The Iowa minimum wage is automatically replaced with the Federal minimum wage rate if it is higher than the State minimum. | | | | |
| **Kansas** | $7.25 | | 46 | |
| The State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act. | | | | |
| **Kentucky** | $7.25 | | 40 (7th day) | |
| The 7th day overtime law, which is separate from the minimum wage law differs in coverage from that in the minimum wage law and requires premium pay on the seventh day for those employees who work seven days in any one workweek. The state adopts the Federal minimum wage rate by reference if the Federal rate is greater than the State rate. Compensating time in lieu of overtime is allowed upon written request by an employee of any county, charter county, consolidated local government, or urban-county government, including an employee of a county-elected official. | | | | |
| **Louisiana** No State Min Wage | | | | |
| **Maine** | $7.50 | | 40 | |
| The Maine minimum wage is automatically replaced with the Federal minimum wage rate if it is higher than the State minimum with the exception that any such increase is limited to no more than $1.00 per hour above the current legislated State rate. | | | | |
| **Maryland** | $7.25 | | 40 | |
| The Maryland minimum wage is automatically replaced with the Federal minimum wage rate if it is higher than the State minimum wage rate. | | | | |
| **Massachusetts** | $8.00 | | 40 | |
| The Massachusetts minimum wage rate automatically increases to 10 cents above the rate set in the Fair Labor Standards Act if the Federal minimum wage equals or becomes higher than the State minimum. | | | | |
| **Michigan** | $7.40 | | 40 | Applicable to employers with 2+ employees |
| The State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act unless the State wage rate is higher than the Federal. | | | | |
| **Minnesota** Large employer (annual receipts of $625,000 or more) | $6.15 | | 48 | |
| **Minnesota** Small employer (annual receipts of less than $625,000) | $5.25 | | 48 | |
| **Mississippi** No State Min Wage | $7.25 | | 40 | |
| In addition to the exemption for federally covered employment, the law exempts, among others, employees of a retail or service business with gross annual sales or business done of less than $500,000. Premium pay required after 52 hours in seasonal amusement or recreation businesses. Minimum wage is to be increased or decreased by a cost of living factor starting January 1, 2008 and every January 1 thereafter. | | | | |
| **Montana** | $7.35 | | | |

| | | | | |
|---|---|---|---|---|
| **Montana**<br>State Law<br>Except businesses with gross annual sales of $110,000 or less | $4.00 | | 40 | |
| Minimum wage is subject to a cost of living adjustment done by September 30 of each year and effective on January 1 of the following year. | | | | |
| **Nebraska** | $7.25 | | | Applicable to employers with 4+ employees |
| **Nevada** | $8.25 (with no health ins. benefits)<br>$7.25 (with health ins. Benefits) | 8 | 40 | |
| The premium overtime pay requirement on either a daily or weekly basis is not applicable to employees who are compensated at not less than one and one-half times the minimum rate or to employees of enterprises having a gross annual sales volume of less than $250,000. The basic hourly rate is increased to $6.55 when the employer offers the employee a qualified health plan. The minimum wage rate may be increased annually based upon changes in the cost of living index increase. | | | | |
| **New Hampshire** | $7.25 | | 40 | |
| The New Hampshire minimum wage is automatically replaced with the Federal minimum wage rate if it is higher than the State minimum. | | | | |
| **New Jersey** | $7.25 | | 40 | |
| **New Mexico** | $7.50 | | 40 | |
| **New York** | $7.25 | | 40 | |
| The New York minimum wage is automatically replaced with the Federal minimum wage rate if it is higher than the State minimum. | | | | |
| **North Carolina** | $7.25 | | 40 | |
| Premium pay is required after 45 hours a week in seasonal amusements or recreational establishments. | | | | |
| **North Dakota** | $7.25 | | 40 | |
| **Ohio** | $7.40<br>$7.25 (for those employers grossing $271,000 or less) | | 40 | |
| **Oklahoma**<br>Employers of ten+ full time employees at any one location and employers with annual gross sales over $100,000 irrespective of number of full time employees. | 7.25 | | | |
| **Oklahoma**<br>All other employers | $2.00 | | | |
| The Oklahoma state minimum wage law does not contain current dollar minimums. Instead the state adopts the Federal minimum wage rate by reference. The State law excludes from coverage any employment that is subject to the FLSA. | | | | |
| **Oregon** | $8.50 | | 40 | |
| Premium pay required after 10 hours a day in non-farm canneries, driers, or packing plants and in mills, factories or manufacturing establishments (excluding sawmills, planning mills, shingle mills, and logging camps). Beginning January 1, 2004, and annually thereafter, the rate will be adjusted for inflation by a calculation using the U.S. City Average Consumer Price Index for All Urban | | | | |

| | | | | |
|---|---|---|---|---|
| Consumers for All Items. The wage amount established will be rounded to the nearest five cents. | | | | |
| **Pennsylvania** | $7.25 | | 40 | |
| **Puerto Rico** | $4.10 | 8<br>*And on statutory rest day (double time)* | 40 (Double time) | |
| Employers covered by the Federal Fair Labor Standards Act (FLSA) are subject only to the Federal minimum wage and all applicable regulations. Employers not covered by the FLSA will be subject to a minimum wage that is at least 70 percent of the Federal minimum wage or the applicable mandatory decree rate, whichever is higher. The Secretary of Labor and Human Resources may authorize a rate based on a lower percentage for any employer who can show that implementation of the 70 percent rate would substantially curtail employment in that business. Puerto Rico also has minimum wage rates that vary according to the industry. These rates range from a minimum of $4.25 to $7.25 per hour. | | | | |
| **Rhode Island** | $7.40 | | 40 | |
| Time and one-half premium pay for work on Sundays and holidays in retail and certain other businesses is required under two laws that are separate from the minimum wage law. | | | | |
| **South Carolina**<br>No State Min Wage | | | | |
| **South Dakota** | $7.25 | | | |
| **Tennessee**<br>No State Min Wage | | | | |
| The state does have a promised wage law whereby the employers are responsible for paying to the employees the wages promised by the employer. | | | | |
| **Texas** | $7.25 | | | |
| The State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act. The Texas State minimum wage law does not contain current dollar minimums. Instead the State adopts the Federal minimum wage rate by reference. | | | | |
| **Utah** | $7.25 | | | |
| The Utah state minimum wage law does not contain current dollar minimums. Instead the state law authorizes the adoption of the Federal minimum wage rate via administrative action. The State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act. | | | | |
| **Vermont** | $8.15 | | 40 | Applicable to employers with 2+ employees |
| The State overtime pay provision has very limited application because it exempts numerous types of establishments, such as retail and service; seasonal amusement/recreation; hotels, motels, restaurants; and transportation employees to whom the Federal (FLSA) overtime provision does not apply. The Vermont minimum wage is automatically replaced with the Federal minimum wage rate if it is higher than the State minimum. Beginning January 1, 2007, and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, or city average, not seasonally adjusted. | | | | |
| **Virginia** | $7.25 | | | Applicable to employers with 4+ employees |
| The Virginia state minimum wage law does not contain current dollar minimums. Instead the state adopts the Federal minimum wage rate by reference. The State law excludes from coverage any employment that is subject to the FLSA. | | | | |
| **Washington** | $8.67 | | 40 | |
| Premium pay not applicable to employees who request compensating time off in lieu of premium pay. Beginning January 1, 2001, and annually thereafter, the rate will be adjusted for inflation by a calculation using the consumer price index for urban wage earners and clerical workers for the prior year. | | | | |
| **West Virginia** | $7.25 | | 40 | Applicable to employers of 6+ employees at one location |
| **Wisconsin** | $7.25 | | 40 | |
| **Wyoming** | $5.15 | | | |

## Consolidated State Minimum Wage Update Table

| > Federal MW | Equals Federal MW of $7.25 | < Federal MW | No MW Required |
|---|---|---|---|
| AK - 7.75 | DE | AR - 6.25 | AL |
| AZ - 7.35 | FL | GA - 5.15 | LA |
| CA - 8.00 | HI | MN - 6.15 | MS |
| CO - 7.36 | IA | WY - 5.15 | SC |
| CT - 8.25 | ID | | TN |
| DC - 8.25 | IN | | |
| IL - 8.25 | KS | **4 States** | |
| MA - 8.00 | KY | | **5 States** |
| ME - 7.50 | MD | | |
| MI - 7.40 | MO | | |
| MT - 7.35 | NE | | |
| NV - 8.25 | NH | | |
| NM - 7.50 | NJ | | |
| OH - 7.40 | NY | | |
| OR - 8.50 | NC | | |
| RI - 7.40 | ND | | |
| VT - 8.15 | OK | | |
| WA - 8.67 | PA | | |
| | SD | | |
| | TX | | |
| **17 States + DC** | UT | | |
| | VA | | |
| | WV | | |
| | WI | | |
| | | | |
| | | | |
| | **24 states** | | |
| | | | |
| | | | |

## Table of Minimum Paid Rest Period Requirements Under State Law for Adult Employees in Private Sector

| State 1/ | Basic Standard | Prescribed By: | Coverage 2/ | Comments |
|---|---|---|---|---|
| **California** | Paid 10-minute rest period for each 4 hours worked or major fraction thereof; as practicable, in middle of each work period. Not required for employees whose total daily work time is less than 3 and 1/2 hours. | Administratively issued Industrial Welfare Commission Orders. | Uniform application to industries under 15 Orders, including agriculture and household employment. Excludes professional actors, sheepherders under Agricultural Occupations Order, and personal attendants under Household Occupations Order. | Additional interim rest periods required in motion picture industry during actual rehearsal or shooting for swimmers, dancers, skaters or other performers engaged in strenuous physical activity.<br>Under all Orders, except for private household employment, Division of Labor Standards Enforcement may grant exemption upon employer application on the basis of undue hardship, if exemption would not materially affect welfare or comfort of employees. |
| **Colorado** | Paid 10-minute rest period for each 4-hour work period or major fraction thereof; as practicable, in middle of each work period. | Administratively issued Wage Order for 7 industries. | Applicable to retail trade, food and beverage, public housekeeping, medical profession, beauty service, laundry and dry cleaning and janitorial service industries. Excludes certain occupations, such as teacher, nurse, and other medical professionals. | |
| **Illinois** | Each hotel room attendant -- those persons who clean or put guest rooms in order in a hotel or other establishment licensed for transient occupancy -- shall receive a minimum of two 15-minute paid rest breaks and one 30-minute meal period in each workday in which they work at least seven hours. | Statute | Applies to an establishment located in a county with a population greater than three million. | Employees may not be required to work during a break period. Break area must be provided with adequate seating and tables in a clean and comfortable environment. Clean drinking water must be provided without charge. Employer must keep complete and accurate records of the break periods. |

## Table of Minimum Paid Rest Period Requirements Under State Law for Adult Employees in Private Sector

| State 1/ | Basic Standard | Prescribed By: | Coverage 2/ | Comments |
|---|---|---|---|---|
| **Kentucky** | Paid 10-minute rest period for each 4-hour work period | Statute | Excludes employees under the Federal Railway Labor Act. | Rest period must be in addition to regularly scheduled meal period. |
| **Minnesota** | Paid adequate rest period within each 4 consecutive hours of work, to utilize nearest convenient restroom. | Statute | Excludes certain agricultural and seasonal employees. | Different rest breaks permitted if pursuant to a collective bargaining agreement. |
| **Nevada** | Paid 10-minute rest period for each 4 hours worked or major fraction thereof; as practicable, in middle of each work period. Not required for employees whose total daily work time is less than 3 and 1/2 hours. | Statute | Applicable to employers of two or more employees at a particular place of employment. Excludes employees covered by a collective bargaining agreement. | Labor Commissioner may grant exemption on employer evidence of business necessity. |
| **Oregon** | Paid 10-minute rest period for every 4-hour segment or major portion thereof in one work period; as feasible, approximately in middle of each segment of work period. | Administratively issued Wage and Hour Commission rules. | Applicable to every employer, except in agriculture and except employees covered by collective bargaining agreement. | Rest period must be in addition to usual meal period and taken separately; not to be added to usual meal period or deducted from beginning or end of work period to reduce overall length of total work period. In absence of regularly scheduled rest periods, it is sufficient compliance when employer can show that the employee has, in fact, received the time specified (permitted only where employer can show that ordinary nature of the work prevents employer from establishing and maintaining a regularly scheduled rest period). Rest period is not required for employees age 18 or older who work alone in a retail or service establishment serving the general public and who work less than 5 hours in a period of 16 continuous hours. |

## Table of Minimum Paid Rest Period Requirements Under State Law for Adult Employees in Private Sector

| State 1/ | Basic Standard | Prescribed By: | Coverage 2/ | Comments |
|---|---|---|---|---|
| **Vermont** | Employees are to be given "reasonable opportunities" during work periods to eat and use toilet facilities in order to protect the health and hygiene of the employee. | 21 V.S.A., Section 304 | | |
| **Washington** | Paid 10-minute rest period for each 4-hour work period, scheduled as near as possible to midpoint of each work period. Employee may not be required to work more than 3 hours without a rest period. | Administrative regulation | Excludes newspaper vendor or carrier, domestic or casual labor around private residence, sheltered workshop, and agricultural labor. 3/ Rules for construction trade employees may be superseded by a collective bargaining agreement covering such employees if the terms of the agreement specifically require rest periods and prescribe requirements concerning them. | Scheduled rest periods not required where nature of work allows employee to take intermittent rest periods equivalent to required standard. Director of Labor and Industries may grant variance from basic standard for good cause, upon employer application. |

**FOOTNOTES**

1/ States not listed do not require paid rest periods. All of the eight States with paid rest period requirements, also have meal period requirements.

2/ Not displayed in table are exemptions for executive, administrative and professional employees, and for outside salespersons.

3/ Washington State. Although agricultural labor is excluded from the listed requirement of general application, a separate regulation requires a paid 10-minute rest period in each 4-hour period of agricultural employment.

**Division of Communications**
**Wage and Hour Division**
**U.S. Department of Labor**

*This document was last revised in December 2010; unless otherwise stated, the information reflects requirements that were in effect, or would take effect, as of January 1, 2011.*

## Table of Meal Period Requirements Under State Law For Adult Employees in Private Sector

| Jurisdiction 2/ | Basic Standard | Prescribed By: | Coverage 3/ | Comments |
|---|---|---|---|---|
| **California** | 1/2 hour, after 5 hours, except when workday will be completed in 6 hours or less and there is mutual employer/employee consent to waive meal period. On-duty meal period counted as time worked and permitted only when nature of work prevents relief from all duties and there is written agreement between parties. Employee may revoke agreement at any time.<br>An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived.<br>The Industrial Welfare Commission may adopt working condition orders permitting a meal period to start after 6 hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees. | Administratively issued Industrial Welfare Commission Orders, and California Labor Code section 512. | Uniform application to industries under 14 Orders, including agriculture and private household employment. Exempts employees in the wholesale baking industry who are subject to an Industrial Welfare Commission Wage Order and who are covered by a valid collective bargaining agreement that provides for a 35-hour workweek consisting of five 7-hour days, payment of 1 and 1/2 times the regular rate of pay for time worked in excess of 7 hours per day, and a rest period of not less than 10 minutes every 2 hours.<br>Exceptions apply to motion picture or broadcasting industries pursuant to Labor Code sections 512 and 226.7, and Industrial Welfare Commission Wage Orders 11 and 12. | |
| **Colorado** | 1/2 hour after 5 hours, except when workday will be completed in 6 hours or less. On-duty meal period counted as time worked and permitted when nature of work prevents relief from all duties. | Administratively issued Wage Order for 7 industries | Applicable to retail trade, food and beverage, public housekeeping, medical profession, beauty service, laundry and dry cleaning, and janitorial service industries. Excludes certain occupations, such as teacher, nurse, and other medical professionals. | |

## Table of Meal Period Requirements Under State Law For Adult Employees in Private Sector

| Jurisdiction 2/ | Basic Standard | Prescribed By: | Coverage 3/ | Comments |
|---|---|---|---|---|
| **Connecticut** | 1/2 hour after first 2 hours and before last 2 hours for employees who work 7 1/2 consecutive hours or more.of the affected employees. | Statute | Excludes employer who provides 30 or more total minutes of paid rest or meal periods within each 7 1/2 hour work period. Meal period requirement does not alter or impair collective bargaining agreement in effect on 7/1/90, or prevent a different schedule by written employer/employee agreement. | Labor Commissioner is directed to exempt by regulation any employer on a finding that compliance would be adverse to public safety, or that duties of a position can be performed only by one employee, or in continuous operations under specified conditions, or that employer employs less than 5 employees on a shift at a single place of business provided the exemption applies only to employees on such shift. |
| **Delaware** | 1/2 hour, after first 2 hours and before the last 2 hours, for employees who work 7 1/2 consecutive hours or more. | Statute | Excludes teachers and workplaces covered by a collective bargaining agreement or other written employer/ employee agreement providing otherwise. Exemptions may also be granted where compliance would adversely affect public safety; only one employee may perform the duties of a position, an employer has fewer than five employees on a shift at a single place of business; or where the continuous nature of an employer's operations requires employees to respond to urgent or unusual conditions at all times and the employees are compensated for their meal break periods | An administrative penalty of up to $1,000 for each violation may be assessed an employer who discharges or discriminates against an employee for complaining or providing information to the Department of Labor pursuant to a violation of this requirement. |

## Table of Meal Period Requirements Under State Law For Adult Employees in Private Sector

| Jurisdiction 2/ | Basic Standard | Prescribed By: | Coverage 3/ | Comments |
|---|---|---|---|---|
| **Illinois** | Each hotel room attendant -- those persons who clean or put guest rooms in order in a hotel or other establishment licensed for transient occupancy -- shall receive a minimum of two 15-minute paid rest breaks and one 30-minute meal period in each workday in which they work at least seven hours. | Statute | Applies to an establishment located in a county with a population greater than three million. Excludes employees whose meal periods are established by collective bargaining. Different requirements apply to employees who monitor individuals with developmental disabilities and/or mental illness. | Employees may not be required to work during a break period. Break area must be provided with adequate seating and tables in a clean and comfortable environment. Clean drinking water must be provided without charge. Employer must keep complete and accurate records of the break periods. |
| **Kentucky** | Reasonable off-duty period, ordinarily 1/2 hour but shorter period permitted under special conditions, between 3rd and 5th hour of work. Not counted as time worked. Coffee breaks and snack time not to be included in meal period. | Statute and regulation | Excludes employers subject to Federal Railway Labor Act. Meal period requirement does not negate collective bargaining agreement or mutual agreement between employer and employee. | |
| **Maine** | 1/2 hour, after 6 consecutive hours, except in cases of emergency and except where nature of work allows employees frequent breaks during workday. | Statute | Applicable to places of employment where 3 or more employees are on duty at one time. Not applicable if collective bargaining or other written employer-employee agreement provides otherwise. | |
| **Massachusetts** | 1/2 hour, if work is for more than 6 hours. | Statute | Excludes iron works, glass works, paper mills, letter press establishments, print works, and bleaching or dyeing works. | Labor Commissioner may grant exemption to a factory workshop or mechanical establishment, if in discretion of Commissioner, it is necessary by reason of continuous process or special circumstance, including collective bargaining agreement. |

## Table of Meal Period Requirements Under State Law For Adult Employees in Private Sector

| Jurisdiction 2/ | Basic Standard | Prescribed By: | Coverage 3/ | Comments |
|---|---|---|---|---|
| **Minnesota** | Sufficient unpaid time for employees who work 8 consecutive hours or more. | Statute | Excludes certain agricultural and seasonal employees. Meal period requirement does not prohibit different provisions under collective bargaining agreement. | |
| **Nebraska** | 1/2 hour, off premises, between 12 noon and 1 p.m. or at other suitable lunch time. | Statute | Applicable to assembly plant, workshop, or mechanical establishment, unless employee is covered by a valid collective bargaining agreement or other written agreement between an employer and employee. | |
| **Nevada** | 1/2 hour, if work is for 8 continuous hours. | Statute | Applicable to employers of two or more employees. Excludes employees covered by collective bargaining agreement | Labor Commissioner may grant exemption on employer evidence of business necessity. |
| **New Hampshire** | 1/2 hour, after 5 consecutive hours, unless feasible for employee to eat while working and is permitted to do so by employer. | Statute | Applicable to any employer. | |
| **New York** | 1 hour noon-day period | Statute | Factories. | Labor Commissioner may give written permission for shorter meal period under each standard. |
| | 30 minute noonday period for employees who work shifts of more than 6 hours that extend over the noon day meal period. | Statute | All other establishments and occupations covered by the Labor Law. | |
| | An additional 20 minutes between 5 p.m. and 7 p.m. for those employed on a shift starting before 11 a.m. and continuing after 7 p.m. | Statute | All industries and occupations. | |
| | 1 hour in factories, 45 minutes in other establishments, midway in shift, for those employed more than a 6-hour period starting between 1 p.m. and 6 a.m. | Statute | See basic standard | |

## Table of Meal Period Requirements Under State Law For Adult Employees in Private Sector

| Jurisdiction 2/ | Basic Standard | Prescribed By: | Coverage 3/ | Comments |
|---|---|---|---|---|
| **North Dakota** | 1/2 hour, if desired, on each shift exceeding 5 hours. | Administratively issued Minimum Wage and Work Conditions Order. | Applicable when two or more employees are on duty. Collective bargaining agreement takes precedence over meal period requirement. | Employees who are completely relieved of their duties but required to remain on site do not have to be paid. |
| **Oregon** | 1/2 hour, with relief from all duty, for each work period of 6 to 8 hours, between 2nd and 5th hour for work period of 7 hours or less and between 3rd and 6th hour for work period over 7 hours; or, less than 1/2 hour but not less than 20 minutes, with pay, with relief from all duty, where employer can show that such a paid meal period is industry practice or custom; or, where employer can show that nature of work prevents relief from all duty, an eating period with pay while on duty for each period of 6 to 8 hours. | Administratively issued Wage and Hour Commission rules. | Applicable to every employer, except in agriculture and except employees covered by collective bargaining agreement. | In absence of regularly scheduled meal periods, it is sufficient compliance when employer can show that the employee has, in fact, received the time specified (permitted only where employer can show that ordinary nature of the work prevents employer from establishing and maintaining a regularly scheduled meal period). |
| **Rhode Island** | All employees are entitled to a 20 minute mealtime within a six hour work shift, and a 30 minute mealtime within an eight hour work shift. | Statute | Uniform application to all employees except to an employer of a licensed health care facility or an employer who employs less than three people on any shift at the worksite. | |
| **Tennessee** | 1/2 hour for employees scheduled to work 6 consecutive hours or more. | Statute | Applicable to every employer. | |
| **Vermont** | Employees are to be given "reasonable opportunities" during work periods to eat and use toilet facilities in order to protect the health and hygiene of the employee. | 21V.S.A. Section 304 | Universal application | |
| **Washington** | 1/2 hour, if work period is more than 5 consecutive hours, to be given not less than 2 hours nor more than 5 hours from beginning of shift. Counted as worktime if employee is required to remain on duty on premises or at a prescribed worksite. Additional 1/2 hour, before or during overtime, for employees working 3 or more hours beyond regular workday. | Administrative regulation | Excludes newspaper vendor or carrier, domestic or casual labor around private residence, sheltered workshop, and agricultural labor. 2/ Rules for construction trade employees may be superseded by a collective bargaining agreement covering such employees if the terms of the agreement specifically require meal periods and prescribe requirements concerning them. | Director of Labor and Industries may grant variance for good cause, upon employer application. |

## Table of Meal Period Requirements Under State Law For Adult Employees in Private Sector

| Jurisdiction 2/ | Basic Standard | Prescribed By: | Coverage 3/ | Comments |
|---|---|---|---|---|
| **West Virginia** | 20 minutes for employees who work 6 consecutive hours or more. | Statute | Applicable to every employer. Meal period is required where employees are not afforded necessary breaks and/or permitted to eat lunch while working. | |
| **Guam** | 1/2 hour, after 5 hours, except when workday will be completed in 6 hours or less and there is mutual employer/employee consent to waive meal period. Not considered time worked unless nature of work prevents relief from duty. | Statute | Excludes agriculture where fewer than 10 are employed, domestic employment, and fishing industry, among others. | |
| **Puerto Rico** | 1 hour, after end of 3rd but before beginning of 6th consecutive hour worked. Double-time pay required for work during meal hour or fraction thereof. | Statute | Excludes domestic service; and public sector employment other than agricultural, industrial, commercial or public service enterprises. | Meal period may be shortened for convenience of employee by mutual employer/employee consent and with approval of Secretary of Labor. Such consent and approval not necessary if union and employer agree on shorter period. Requirement for a second meal period for employees working up to 10 hours may be waived with approval of Secretary of Labor. |

FOOTNOTES

1/The following 35 jurisdictions also have separate provisions requiring meal periods specifically for minors (when minors are covered by two provisions, employer must observe the higher standard): Alabama, Alaska, California, Colorado, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Washington, West Virginia, Wisconsin, Guam, and Puerto Rico.

2/ In addition to the States with Standards of general application a 30-minute meal period is required for seasonal farm workers after 5 hours in **Pennsylvania,** and for migrant workers in **Wisconsin** after 6 hours. In **Washington St**ate, although agricultural labor is excluded from the listed requirement of general application, a separate regulation requires a 30-minute meal period after 5 hours in agriculture and an additional 30 minutes for employees working 11 or more hours in a day. In addition to the listed States with mandatory Standards, other provisions appear in two States:

**New Mexico**. A provision applicable to females and administratively extended to men does not require a meal period, but provides that when a meal period is granted (in industrial, mercantile and certain service industries), it must be at least ? hour, not counted as time worked. **Wisconsin.** By regulation, the recommended standard is 1/2 hour after 6 consecutive hours' work in factories, mechanical and mercantile establishments and certain service industries, to be given reasonably close to usual meal time or near middle of shift.

3/ Not displayed in table are exemptions for executive, administrative and professional employees, and for outside salespersons. Of the 21 States or other jurisdictions with meal period requirements, 7 States also have rest periods requirements (California, Colorado, Kentucky, Minnesota, Nevada, Oregon, and Washington).

**Division of Communications • Wage and Hour Division • U.S. Department of Labor**

*This document was last revised in December 2010; unless otherwise stated, the information reflects requirements that were in effect, or would take effect, as of January 1, 2011.*

## Table of Minimum Hourly Wages for Tipped Employees, by State

| Jurisdiction | Basic Combined Cash & Tip Minimum Wage Rate | Maximum Tip Credit Against Minimum Wage | Minimum Cash Wage 1 | Definition of Tipped Employee by Minimum Tips received (monthly unless otherwise specified) |
|---|---|---|---|---|
| **FEDERAL:** Fair Labor Standards Act (FLSA) | $7.25 | $5.12 | $2.13 | More than $30 |
| **STATE LAW DOES NOT ALLOW TIP CREDIT<br>Minimum rate same for tipped and non-tipped employees** | | | | |
| **Alaska** | | | $7.75 | |
| **California** | | | $8.00 | |
| **Guam** | | | $6.55 | |
| **Minnesota:** | | | | |
| Large employer 2 | | | $6.15 | |
| Small employer 2 | | | $5.25 | |
| **Montana:** | | | | |
| Business with gross annual sales over $110,000 | | | $7.35 | |
| Business with gross annual sales of $110,000 or less | | | $4.00 | |
| **Nevada** | | | $8.25<br><br>$7.25 | With no health insurance benefits provided by employer and received by employee<br><br>With health insurance benefits provided by employer and received by employee |
| **Oregon** | | | $8.50 | |
| **Washington** | | | $8.67 | |
| **Minimum rate lower for tipped employees than for non-tipped** | | | | |
| **New Mexico** | $7.50 | $5.37 | $2.13 | More than $30 |
| **Puerto Rico** | | | | |
| **STATE LAW ALLOWS TIP CREDIT** | | | | |
| **Arizona** | $7.35 | $3.00 | $4.35 | Not specified |
| **Arkansas** | $6.25 | $3.62 | $2.63 | More than $20 |
| **Colorado** | $7.36 | $3.02 | $4.34 | More than $30 |
| **Connecticut** | $8.25 | 31.0% | $5.69 | At least $10 weekly for full-time employees or $2.00 daily for part-time in hotels and restaurants. Not specified for other industries. |
| Hotel, restaurant | | $2.56 | $5.69 | |
| Bartenders who customarily receive tips | | 11% | $7.34 | |

## Table of Minimum Hourly Wages for Tipped Employees, by State

| Jurisdiction | Basic Combined Cash & Tip Minimum Wage Rate | Maximum Tip Credit Against Minimum Wage | Minimum Cash Wage 1 | Definition of Tipped Employee by Minimum Tips received (monthly unless otherwise specified) |
|---|---|---|---|---|
| **Delaware** | $7.25 | $5.02 | $2.23 | More than $30 |
| **District of Columbia** | $8.25 | $5.48 | $2.77 | Not specified |
| **Florida** | $7.25 | $3.02 | $4.23 | |
| **Hawaii** | $7.25 | $0.25 | $7.00 | More than $20 |
| **(Tip Credit permissible if the combined amount the employee receives from the employer and in tips is at least 50 cents more than the applicable minimum wage)** | | | | |
| **Idaho** | $7.25 | $3.90 | $3.35 | More than $30 |
| **Illinois** | $8.25 | 40% | $4.95 | $20 |
| **Indiana** | $7.25 | $5.12 | $2.13 | Not specified |
| **Iowa** | $7.25 | $2.90 | $4.35 | More than $30 |
| **Kansas** | $7.25 | 40% | $2.13 | More than $20 |
| **Kentucky** | $7.25 | $5.12 | $2.13 | More than $30 |
| **Maine** | $7.50 | 50% | $3.75 | More than $20 |
| **Maryland** | $7.25 | up to 50% | $3.63 | More than $30 |
| **Massachusetts** | $8.00 | $5.37 | $2.63 | More than $20 |
| **Michigan** | $7.40 | $4.75 | $2.65 | Not specified |
| **Missouri** | $7.25 | $3.62 | $3.63 | Not specified |
| **Nebraska** | $7.25 | $5.12 | $2.13 | Not specified |
| **New Hampshire** | $7.25 | 55% | 45% | More than $30 |
| **New Jersey** | $7.25 | $5.12 3 | $2.13 | Not specified |
| **New York** | $7.25 | $5.12 | $2.13 | Not specified |
| *Building service* | | None | $7.25 | Not specified |
| *Restaurant industry* | | | | |
| Food service workers | | $2.60 | $4.65 | |
| All other workers | | | | |
| Employees averaging between $1.60 and $2.35 per hour in tips. | | $1.60 | $5.65 | |
| Employees averaging $2.35 per hour or more in tips. | | $2.35 | $4.90 | |
| *Hotel industry* | | | | |
| *Food service workers* | | $2.60 | $4.65 | |
| All other workers (all year and resort hotels) | | | | |
| Employees averaging between $1.60 and $2.35 per hour in tips | | $1.60 | $5.65 | |

## Table of Minimum Hourly Wages for Tipped Employees, by State

| Jurisdiction | Basic Combined Cash & Tip Minimum Wage Rate | Maximum Tip Credit Against Minimum Wage | Minimum Cash Wage 1 | Definition of Tipped Employee by Minimum Tips received (monthly unless otherwise specified) |
|---|---|---|---|---|
| **New York** Employees averaging $2.35 per hour or more in tips | | $2.35 | $4.90 | |
| All other workers averaging more than $4.10 per hour in tips | | $2.90 | $4.35 | |
| Chambermaids (Resort Hotels only) | | | | |
| Chambermaids averaging between $1.10 and $4.10 per hour in tips | | $1.10 | $6.15 | |
| Employees averaging $4.10 per hour or more in tips | | $2.35 | $4.90 | |
| Employees averaging between $1.10 and $1.75 per hour in tips | | $1.10 | $6.15 | |
| Employees averaging more than $1.75 per hour in tips | | $1.75 | $5.50 | |
| **North Carolina 4** | $7.25 | $5.12 | $2.13 | More than $20 |
| **North Dakota** | $7.25 | 33% | $4.86 | More than $30 |
| **Ohio 5** | $7.40 | 50% | $3.70 | More than $30 |
| **Oklahoma 6** | $7.25 | 50% 3 | $3.63 | Not specified |
| **Pennsylvania** | $7.25 | $4.42 | $2.83 | More than $30 |
| **Rhode Island** | $7.40 | $4.51 | $2.89 | Not specified |
| **South Dakota** | $7.25 | $5.12 3 | $2.13 | More than $35 |
| **Texas** | $7.25 | $5.12 | $2.13 | More than $20 |
| **Utah** | $7.25 | $5.12 | $2.13 | More than $30 |
| **Vermont** Employees in hotels, motels, tourist places, and restaurants who customarily and regularly receive tips for direct and personal customer service. | $8.15 | $4.20 | $3.95 | More than $120 |
| *All other employees* | | None | $6.25 | |
| **Virginia** | $7.25 | $5.12 | $2.13 | Not specified |
| **Virgin Islands** | $7.25 | $5.12 | $2.13 | Not specified |
| **West Virginia 7** | $7.25 | $1.45 | $5.80 | Not specified |

## Table of Minimum Hourly Wages for Tipped Employees, by State

| Jurisdiction | Basic Combined Cash & Tip Minimum Wage Rate | Maximum Tip Credit Against Minimum Wage | Minimum Cash Wage 1 | Definition of Tipped Employee by Minimum Tips received (monthly unless otherwise specified) |
|---|---|---|---|---|
| **Wisconsin 8** | $7.25 | $4.92 | $2.33 | Not specified |
| **Wyoming** | $7.25 | $3.02 | $2.13 | More than $30 |

The following five states, not included in table, do not have State minimum wage laws: Alabama, Mississippi, South Carolina, and Tennessee. Also not included is Georgia, which exempts tipped employee under the law.
Some states set subminimum rates for minors and/or students or exempt them from coverage, or have a training wage for new hires. Such differential provisions are not displayed in this table.

**FOOTNOTES**

1 Other additional deductions are permitted, for example for meals and lodging, except as noted in footnote 8.

**2 Minnesota.** A large employer is an enterprise with annual receipts of $625,000 or more; a small employer, less than $625,000.

3 In **New Jersey, Oklahoma,** and **South Dakota,** the listed maximum credit is the total amount allowable for tips, food and lodging combined, not for tips alone as in other states.
Regarding **Oklahoma**, when a food and/or lodging credit is not involved, the wage tip credit is limited to $2.13 per hour.
In New Jersey, in specific situations where the employer can prove to the satisfaction of the labor department that the tips actually received exceed the creditable amount, a higher tip credit may be taken.

**4 North Carolina.** tip credit is not permitted unless the employer obtains from each employee, monthly or for each pay period, a signed certification of the amount of tips received.

**5 Ohio.** The minimum cash wage for tipped employees of employers with gross annual sales in excess of $255,000 is $3.50 per hour (plus tips). For tipped employees of employers with gross annual sales of less than $255,000, the tipped employee hourly rate is $2.93 per hour (plus tips).

**6 Oklahoma.** For employers with fewer than 10 full-time employees at any one location who have gross annual sales of $100,000 or less, the basic minimum rate is $2.00 per hour, with a 50% maximum tip credit.

**7 West Virginia**. For employers with six or more employees and for state agencies.

**8 Wisconsin.** $2.13 per hour may be paid to employees who are not yet 20 years old and who have been in employment status with a particular employer for 90 or fewer consecutive calendar days from the date of initial employment.

***Prepared By:***
**Division of Communications**
**Wage and Hour Division**
**U.S. Department of Labor**
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## Selected State Child Labor Standards for Children Under 18 in Non-farm Employment

| State | Maximum daily and weekly hours and days per week for minors of age: a | | Nightwork prohibited for minors of age: a | |
|---|---|---|---|---|
| | Under 16 | 16 and 17 | Under 16 | 16 and 17 |
| **Federal (FLSA)** | 8-40 non-schoolday period<br>Schoolday/week: 3-18 b | | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m. | |
| **Alabama** | 8-40-6<br>Schoolday/week: 3-18 | | 7 p.m. (9 p.m. during summer vacation) to 7 a.m. | 10 p.m. before schoolday to 5 a.m., if enrolled in school (to age 19) |
| **Alaska** | 6-day week<br>Schoolday/week: 9 c - 23 | 6-day week | 9 p.m. to 5 a.m | |
| **Arizona** | 8-40 Schoolday/week: 3-18 | | 9:30 p.m. (11 p.m. before non-schoolday) to 6 a.m. 7 p.m. to 6 a.m. in door-to-door sales or deliveries | |
| **Arkansas** | 8-48-6 | 10-54-6 | 7 p.m. (9 p.m. before non-schoolday) to 6 a.m | 11 p.m. to 6 a.m. before schoolday |
| **California** | 8-40-6<br>Schoolday/week: 3-18 | 8-48-6 Schoolday-week: 4-28 d except 8 before non-schoolday | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m. | 10 p.m. (12:30 a.m. before non-schoolday) to 5 a.m. |
| **Colorado** | 8-40 Schoolday: 6 | 8-40 | 9:30 p.m. to 5 a.m. before schoolday | |
| **Connecticut** | 8-40-6 in mercantile during periods of school vacation of 5 days or more | Enrolled in and not graduated from a secondary institution. 8-48-6, non-school weeks.<br>Schoolday/week: 6 (8 on Friday, Saturday and Sunday) - 32 in restaurant, recreational, amusement, theater, manufacturing, mechanical, retail, hairdressing, bowling alley, pool hall, or photography gallery establishments.<br><br>Not enrolled in and not graduated from a secondary institution. 8-48-6 in retail/mercantile establishments.<br><br>9-48-6 in restaurant, | 7 p.m. (9 p.m. July 1 to the first Monday in September) to 7 a.m. | 11 p.m. (midnight if school vacation, not prior to a schoolday, or not attending school) to 6 a.m. in restaurants, recreational, amusement and theater establishments. 10 p.m. (11 p.m. if school vacation, not prior to a school day, or not attending school; midnight in a supermarket of 3,500 square feet or more when no school the next day) to 6 a.m. in manufacturing, mechanical and retail establishments. |

| State | Maximum daily and weekly hours and days per week for minors of age: a | | Nightwork prohibited for minors of age: a | |
|---|---|---|---|---|
| | Under 16 | 16 and 17 | Under 16 | 16 and 17 |
| | | manufacturing, mechanical, recreation, amusement and theater establishments | | 10 p.m. to 6 a.m. in hairdressing, bowling alley, pool hall, or photograhy gallery establishments. |
| **Delaware** | 8-40-6 Schoolday/week: 4-18 d | 12 c | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m. | 8 hours of non-work, non-school time required in each 24-hour day. |
| **Florida** | 8-40-6 Schoolday: 3 when followed by schoolday, except if enrolled in vocational program Schoolweek: 15 | Minors under 16 may work 8-40 during non-school day or week. | 8-30-6 during schoolyear | 7 p.m. before schoolday to 7 a.m. on schoolday (9 p.m. during holidays and summer vacations to 7 a.m.) |
| **Georgia** | 8-40 Schoolday: 4 | | 9 p.m. to 6 a.m. | |
| **Hawaii** | 8-40-6 Schoolday: 10 c | | 7 p.m. to 7 a.m. (9 p.m. to 6 a.m. June 1 through day before Labor Day). | |
| **Idaho** | 9-54 | | 9 p.m. to 6 a.m. | |
| **Illinois** | 8-48-6 Schoolday/week: 3 [8c]e - 24 | | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m. f | |
| **Georgia** | 8-40 Schoolday: 4 | | 9 p.m. to 6 a.m. | |
| **Hawaii** | 8-40-6 Schoolday: 10 c | | 7 p.m. to 7 a.m. (9 p.m. to 6 a.m. June 1 through day before Labor Day). | |
| **Indiana** | 8-40 Schoolday/week: 3-18 | 8-30 during schoolweek (40 with written parental permission)-6, except if not enrolled in school.<br>9-30 (48 with written parental permission) during non-school weeks. Applies only to minors enrolled in school | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m. | 10 p.m. (midnight before non-schoolday with written parental permission) to 6 a.m., minors of 16 enrolled in school.<br><br>10 p.m. to 6 a.m. before schoolday, minors of 17 (11:30 p.m. with written parental permission or 1 a.m. with written parental permission up to 2 non-consecutive nights per week). |
| **Iowa** | 8-40 Schoolday/week: 4-28 | | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m. | |
| **Kansas** | 8-40 | | 10 p.m. before schoolday to 7 a.m. | |

| State | Maximum daily and weekly hours and days per week for minors of age: a | | Nightwork prohibited for minors of age: a | |
|---|---|---|---|---|
| | Under 16 | 16 and 17 | Under 16 | 16 and 17 |
| **Kentucky** | 8-40 Schoolday/week: 3 (8 on nonschooldays) -18 | 6 (8 Saturday and Sunday) 30, if attending school (40 with parental permission and at least a 2.0 school grade point average) | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m. | 10:30 p.m. (1 a.m. Friday and Saturday) to 6 a.m. when school in session. |
| **Louisiana** | 8-40-6 Schoolday/week: 3-18 | | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m | Non-graduate (7 p.m.-7 a.m. on any school day, 9 p.m.-7 a.m. on any non-school day) |
| **Maine** | 8-40-6 Schoolday/week: 3-18 g if enrolled in school. | 10-50-6 consecutive days if enrolled in school. schoolday/week: 4-20 except 8 before non-schoolday, last scheduled day of school week, on a day on which school is closed. (28 hours in a week with multiple days of school closure) g | 7 p.m. (9 p.m. during summer vacation) to 7 a.m., if enrolled in school. | 10 p.m. (12 a.m. before non-schoolday) to 7 a.m. if enrolled in school. 5 a.m. before non-schoolday. |
| **Maryland** | 8-40 Schoolday/week: 4-23, d | 12 c | 8 p.m. (9 p.m. Memorial Day through Labor Day) to 7 a.m. | 8 consecutive hours of non-work, non-schoolday time required in each 24-hour day. |
| **Massachusetts** | 8-48-6 | 9-48-6 | 7 p.m. (9 p.m. July 1 through Labor Day) to 6:30 a.m. | 10 p.m. (midnight in restaurants and at race tracks on Friday, Saturday, and vacation) to 6 a.m. |
| **Michigan** | 10-48-6 Schoolweek: 48 c | 10-48-6 Schoolweek: 48 c | 9 p.m. to 7 a.m | 10:30 p.m. (11:30 p.m. on Fridays, Saturdays and during school vacations) to 6 a.m., if attending school. 11:30 p.m. to 6 a.m., if not attending school. |
| **Minnesota** | 8-40 | | 9 p.m. to 7 a.m | 11 p.m. to 5 a.m. before schoolday (11:30 p.m. to 4:30 a.m. with written parental permission). |
| **Mississippi** | 8-44 in factory, mill, cannery or workshop. | | 7 p.m. to 6 a.m. in factory, mill, cannery or workshop. | |

| State | Maximum daily and weekly hours and days per week for minors of age: a | | Nightwork prohibited for minors of age: a | |
|---|---|---|---|---|
| | Under 16 | 16 and 17 | Under 16 | 16 and 17 |
| **Missouri** | 8-40-6 Schoolday: 3 | | 7 p.m. (9 p.m. June 1 through Labor Day 10:30 p.m. at regional Fairs or expositions) to 7 a.m. | |
| **Montana** | 8-40 Schoolday/week: 3-18 b | | 7 p.m. (9 p.m. during periods outside the school year (June 1 through Labor Day, depending on local standards)) to 7 a.m. | |
| **Nebraska** | 8-48 | | 8 p.m. to 6 a.m., under 14. 10 p.m. (beyond 10 p.m. before non-schoolday with special permit) to 6 a.m., 14 and 15. | |
| **Nevada** | 8-48 | | ---- | |
| **New Hampshire** | 8 on non-schoolday, 48-hour week during vacation, if enrolled in school. Schoolday/week: 3-23 if enrolled in school. | 48-hour week, 6-day week, during vacation, if enrolled in school. 30-hour week, 6-day week, if enrolled in school. | 9 p.m. to 7 a.m. | |
| **New Jersey** | 8-40-6 Schoolday/week: 3-18 | 8-40-6 | 7 p.m. (9 p.m. during summer vacation with parental permission) to 7 a.m. | 11 p.m. to 6 a.m. during school term, with specified variations |
| **New Mexico** | 8-44 (48 in special cases), under 14 | | 9 p.m. to 7 a.m., under 14 | |
| **New York** | 8-40-6 Schoolday/week: 3-18 b | 8-48-6 Schoolday/week: 4 before schoolday, 8 Friday, Saturday, Sunday or holiday-28, if enrolled in school. | 7 p.m. (9 p.m. June 21 through Labor Day) to 7 a.m. | 10 p.m. (midnight before schooldays with written permission from both parent and school and before non-schoolday with written parental consent) to 6 a.m., while school is in session. Midnight to 6 a.m. while school is not in session. |
| **North Carolina** | 8-40 Schoolday/week: 3-18 b | | 7 p.m. (9 p.m. during summer vacation) to 7 a.m. | 11 p.m. to 5 a.m. before schoolday while school is in session. Not applicable with |

| State | Maximum daily and weekly hours and days per week for minors of age: a | | Nightwork prohibited for minors of age: a | |
|---|---|---|---|---|
| | Under 16 | 16 and 17 | Under 16 | 16 and 17 |
| | | | | written permission from both parent and school. |
| **North Dakota** | 8-40-6 Schoolday/week: 3-18 if not exempted from school attendance. | 8-48-6 | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m. | |
| **Ohio** | 8-40 Schoolday/week: 3-18 | | 7 p.m. (9 p.m. June 1 to Sept. 1 and during school holidays of 5 schooldays or more) to 7 a.m., 7 p.m. to 7 a.m. in door-to-door sales. | 11 p.m. before schoolday to 7 a.m. on schoolday (6 a.m. if not employed after 8 p.m. previous night) if required to attend school. 8 p.m. to 7 a.m. in door-to-door sales. |
| **Oklahoma** | 8-40 Schoolday/week: 3-18 8 hours on schooldays before non-schooldays if employer not covered by FLSA | | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m. 9 p.m. before non-schooldays if employer not covered by FLSA | |
| **Oregon** | 8-40 Schoolday/week: 3-18 b | 44-hour week (emergency overtime with permit) | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m | |
| **Pennsylvania** | 8-44-6 Schoolday/week: 4 (8 on non-schoolday) - 18 | | 8-44-6 28 in schoolweek, if enrolled in regular day school | 7 p.m. (10 p.m. during vacation from June to Labor Day) to 7 a.m. |
| **Rhode Island** | 8-40 | 9-48, during school year | 7 p.m. (9 p.m. during school vacation) to 6 a.m. | 11:30 p.m. (1:30 a.m. before non-schoolday) to 6 a.m., if regularly attending school. |
| **South Carolina** | 8-40 Schoolday/week: 3-18 | | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m. | |
| **South Dakota** | 8-40 Schoolday/week: 4-20 | | After 10 p.m. before schoolday | |
| **Tennessee** | 8-40 Schoolday/week: 3-18 | | 7 p.m. to 7 a.m. (9 p.m. to 6 a.m. before non-schooldays) | 10 p.m. to 6 a.m. (Sunday - Thursday before schooldays) (midnight with parental permission up to 3 nights a week) |
| **Texas** | 8-48 | | 10 p.m. (midnight before non-schoolday or in summer if not enrolled in summer school) to 5 a.m. | |

| State | Maximum daily and weekly hours and days per week for minors of age: a | | Nightwork prohibited for minors of age: a | |
|---|---|---|---|---|
| | Under 16 | 16 and 17 | Under 16 | 16 and 17 |
| **Utah** | 8-40 Schoolday: 4 | | 9:30 p.m. to 5 a.m. before schoolday. | |
| **Vermont** | 8-40-6, non-schoolday period. Schoolday/week: 3-18 | . | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m | |
| **Virginia** | 8-40, non-school period. Schoolday/week: 3-18 | | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m. | |
| **Washington** | 8-40-6 Schoolday/week: 3 (8 Friday, Saturday and Sunday) - 16 | 8-48-6 Schoolday/week: 4 (8 Friday, Saturday and Sunday) - 20. 6-28 with special variance agreed to by parent, employer, student and school | 7 p.m. (9 p.m. Friday and Saturday when school is not in session) to 7 a.m | 10 p.m. Sunday - Thursday (midnight Friday and Saturday and when school is not in session) to 7 a.m. (5 a.m. when school is not in session). 9 p.m. to 7 a.m. in door-to-door sales. |
| **West Virginia** | No minor under 16 years of age may work during school hours under any circumstances. | | 7 p.m. (9 p.m June 1 through Labor Day) to 7 a.m..<br><br>Supervision permit may be issued allowing 14 and 15 year old minors to work until 11:00p.m. when school is not in session. | |
| **Wisconsin** | 8-40-6 Schoolday/week: 4 (8 last schoolday of week and non-schoolday) - 18 d | h-50-6 Schoolday/week: 5 (8 last schoolday of week and non-schoolday) -26 d | 8 p.m. (11 p.m. before non-schoolday) to 7 a.m. | 11 p.m. (12:30 a.m. before non-schoolday) to 7 a.m. (5 a.m. on non-schoolday during schoolweek. h |
| **Wyoming** | 8-56 | | 10 p.m. (midnight before non-schoolday and for minors not enrolled in school) to 5 a.m. | Midnight to 5 a.m., female |
| **District of Columbia** | 8-48-6 | 8-48-6 | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m. | 10 p.m. to 6 a.m. |
| **Guam** | 8-40-6 Schoolday: 9 c | 8-40-6 Schoolday: 9 c | 10 p.m. (midnight on non-school nights) to 6 a.m. | 10 p.m. (midnight on non-school nights) to 6 a.m. |
| **Puerto Rico** | 8-40-6 Schoolday: 8 c | 8-40-6 | 6 p.m. to 8 a.m | 10 p.m. to 6 a.m. |

**a** State hours limitations on a schoolday and in a schoolweek usually apply only to those enrolled in school. Several states exempt high school graduates from the hours and/or nightwork or other provisions, or have less restrictive provisions for minors participating in various school-work programs. Separate nightwork standards in messenger service and street trades are common, but are not displayed in table. Some states have exceptions or special

conditions for minors engaged in specific employments, such as street trades, recreation and entertainment, and jobs in establishments offering alcoholic beverages for sale.

**c** Combined hours of work and school.

**d** More hours are permitted when school is in session less than 5 days.

**e** Illinois. Eight hours are permitted on both Saturday and Sunday if minor does not work outside school hours more than 6 consecutive days in a week and total hours worked outside school does not exceed 24.

**f** Illinois. Minors age 14 or older, employed in recreational or educational activities by a park district or municipal parks and recreation department may work up to 3 hours per school day twice a week until 9 p.m., while school is in session, if the number of hours worked does not exceed 24 a week. Work is permitted until 10 p.m. during summer vacation.

**g** Maine. Minors under age 18 enrolled in school may work up to 50 hours during any week that school is in session less than 3 days or during the first or last week of the school calendar, regardless of how many days school is in session for the week.

**h** Wisconsin has no limit during non-school week on daily hours or nightwork for 16-and 17-year-olds. However, they must be paid time and one-half for work in excess of 10 hours per day or 40 hours per week, which ever is greater. Also, 8 hours rest is required between end of work and start of work the next day, and any work between 12:30 a.m. and 5 a.m. must be directly supervised by an adult.

## Table of Employment/Age Certification Issuance Practice Under State Child Labor Laws

| State | Type of Certificate Issued | | | | | |
|---|---|---|---|---|---|---|
| | Employment certificate | | | Age certification | | |
| | For minors of age indicated [2] | Issued by: | | For minors of age indicated [2] | Issued by: | |
| | | Labor Department | School | | Labor Department | School |
| **Alabama** | Under 18 (M)<br>18 in mines[18] | | X | Not issued | | |
| **Alaska** | Under 17 Under 19 if employer licensed to sell alcohol (M) | **X**[3] | | Not issued | | |
| **Arizona** | Not issued | | | Not issued | | |
| **Arkansas** | Under 16 (M) | X | | 16 and 17 (P) | X | |
| **California** | Under 18 for minors enrolled in school (M) | X (for entertainment industry) | X | Not issued | | |
| **Colorado** | Under 16 during school hours (M) | | X | Under 18 **except** not issued to minors under 16 during school hours (R) | | X |
| **Connecticut** | Under 16 (M) | | X | 16 and 17 (M) | | X |
| **Delaware** | Under 18 (M) | X | X | No provision | | |
| **District of Columbia** | Under 18 (M) | | X | No provision | | |
| **Florida** | No provision | | | Under 18 (R)[4] | | X |
| **Georgia** | Under 18 (M) | | X | No provision | | |
| **Guam** | Under 16 (M) | X | | Not issued | | |
| **Hawaii** | Under 16 (M) | X | | 16 and 17 (M) | X | |
| **Idaho** | Not issued | | | Not issued | | |
| **Illinois** | Under 16 (M) | | X | 16 to 20 (R) | | X |
| **Indiana** | Under 18 (M) | | X | 18 to 21 (R) | | X |
| **Iowa** | Under 16 (M) | [5] | X | 16-18 and over (R) | [5] | X |
| **Kansas** | Under 16 and not enrolled in secondary school | | | Not issued | | |
| **Kentucky** | Not issued | | | Under 18(R)[6] | | X |

| State | Type of Certificate Issued | | | | | |
|---|---|---|---|---|---|---|
| | Employment certificate | | | Age certification | | |
| | For minors of age indicated [2] | Issued by: | | For minors of age indicated [2] | Issued by: | |
| | | Labor Department | School | | Labor Department | School |
| **Rhode Island** | Under 16 (M) | | X | 16 and 17 (M) | | X |
| **South Carolina** | No provision | | | Under 18 (R) | X[14] | |
| **South Dakota** | Not issued | | | Not issued | | |
| **Tennessee** | Not issued [15] | | | Not issued [15] | | |
| **Texas** | No provision | | | Under 18 (R) | X | |
| **Utah** | No provision | | | Under 18 (R) | | X |
| **Vermont** | Under 16 during school hours (M) | X | | Not issued | | |
| **Virgin Islands** | Under 18 (P) | X | | No provision | | |
| **Virginia** | Under 16 (M) | | X | 16 and 17 (R) | | X |
| **Washington** | Under 18 (M) | X | | No provision | | |
| **West Virginia** | Under 16 (M) | | X | 16 and 17 (R) | | X |
| **Wisconsin** | Under 18 (M) | X through permit officers [16] | | 18 and over (R) | X through permit officers [16] | |
| **Wyoming** | Not issued [17] | | | Not issued | | |
| | | | | | | |

**Footnotes:**

[1]Table includes both the general certification procedure required by law and those used in practice. Table does not include exceptions to the general procedures; nor does it identify certificates that may be required for employment in street trades, entertainment, or other work for which a special permit may be required.

[2]Under the columns "For minors of age indicated" an entry of M denotes "Mandated," i.e., the requirement is mandated under State law; R denotes on "Request," i.e., the certificate is not required under State law, but the law directs an administrative agency to issue the certificate on request; P denotes "Practice," i.e., the law makes no requirement, but the State issues the certificate on request.

[3]**Alaska.** In addition to individual certificates, employers may obtain advance approval for a specific job consisting of listed duties permitting them to hire minors, of at least 14 years of age, without prior individual approval.

[4]**Florida**. Employment or age certificates are not required. However, employers of any minor must obtain and keep on record proof of the child's age. An age certificate issued by the district school board is one method of meeting the proof of age requirement.

[5]**Iowa**. Employment and age certificates are issued by both the Iowa Workforce Development Department and the schools.

| State | Type of Certificate Issued | | | | | |
|---|---|---|---|---|---|---|
| | Employment certificate | | | Age certification | | |
| | For minors of age indicated [2] | Issued by: | | For minors of age indicated [2] | Issued by: | |
| | | Labor Department | School | | Labor Department | School |
| **Louisiana** | Under 18 (M) | | X | No provision | | |
| **Maine** | Under 16 (M) | X | | 16 and 17 (R) | X | |
| **Maryland** | Under 18 (M) | X | X | No provision | | X |
| **Massachusetts** | Under 16 (M) | | X | 16 and 17 (M) | | |
| **Michigan** | Under 18 (M) | | X | No provision | | |
| **Minnesota** | Under 16 during school hours (M) | | X | Under 18, **except** not issued to minors under 16 during school hours (R) [7] | | X |
| **Mississippi** | Under 16 in mills, canneries, workshops, factories (M) | | X | Not issued | | |
| **Missouri** | Under 16 (M) | | X | 16 and over (R) | | X |
| **Montana** | Not issued[8] | | | 16 and over: in hazardous occupations (M); in other occupations (R) | X | |
| **Nebraska** | Under 16 (M) | | X | 16 and over (R) | | X |
| **Nevada** | Under 14 (M) [9] | | | Not issued | | |
| **New Hampshire** | Under 16 (M) [10] | X | | Not issued | | |
| **New Jersey** | Under 18 (M) | | X | 18 to 21 (R) | | X |
| **New Mexico** | Under 16 (M) | X | X | 16 and 17 (P) | X | X |
| **New York** | Under 18 (M) | X - for child performers | X | 18 and over (P) | | X |
| **North Carolina** | Under 18 (M) | X | [11] | No provision | | |
| **North Dakota** | Under 16 (M) | X | | 16 and over (P) | X | |
| **Ohio** | Under 16 at any time, and 16 and 17 during school term (M) | | X | Not issued [12] | | |
| **Oklahoma** | Under 16 (M) | | x | 16 and 17 (P) | | x |
| **Oregon** | Not issued[13] | | | No provision | | |
| **Pennsylvania** | Under 18 (M) | | X | No provision | | |
| **Puerto Rico** | Under 18 (M) | X | | 18 to 21 (R) | X | |

[6]**Kentucky**. Employers of children under age 18 must maintain a proof of age.

[7]**Minnesota**. Age certificates are not required. However, employers of any minor must obtain and keep on record proof of the child's age. Age certificates satisfy this requirement as do copies of birth certificates, drivers licenses, and U.S. Department of Justice Immigration and Naturalization Service Employment Eligibility Verification Forms I-9.

[8]**Montana**. No certificate is required at any age in nonhazardous employment. Since minors under 16 may not work in hazardous employment, certificates for this age category are not deemed necessary.

[9]**Nevada**. Only certificates issued are those for minors under age 14 with written permission of district judge.

[10]**New Hampshire**. Work certificates are not required for 16- and 17-year-olds. Instead, employers must maintain on file a signed, written document from the youth's parent or legal guardian authorizing the employment. The Department of Safety may issue age certificates to 16- and 17-year-olds

[11]**North Carolina**. Employment certificates are issued by the Department of Labor or the County Director of Social Services.

[12]**Ohio**. Age certificates are not issued, but proof of age is required for minors 16 and 17 years of age for employment during school vacation. With the approval of the Superintendent of Schools of the district where they live, 16- and 17-year-old minors are not required to provide a certificate to be employed at a seasonal amusement or recreational establishment.

[13]**Oregon**. Minors age 14–17 are not required to obtain work permits. Instead, employers are required to apply for annual certificates to employ these minors.

[14]**South Carolina**. The State Department of Labor issues Federal age certificates upon request for minors under age 18.

[15]**Tennessee**. No certificates are issued. However, employers of minors under age 18 must obtain and keep on file proof of the minor's age. A birth certificate, passport, driver's license, State issued identification, or parent's oath as to the minor's age are acceptable proofs of age under the child labor law.

[16]**Wisconsin**. Certificates are issued by volunteer permit officers who are representatives of the Department of Industry, Labor, and Human Relations. Many of the permit officers are school officials, but other public employees such as municipal and county employees and court officials are also included.

[17]**Wyoming**. Employers of children under age 16 must maintain a proof of age.

[18]**Alabama**. No minor under 18 years of age may be employed in, about, or in connection with any of the following occupations, positions, or places: #3 In tunnels or excavations with depths exceeding four (4) feet. The following occupations in excavation operations are prohibited: Excavating, working in or backfilling (refilling) trenches, except manually excavating or manually backfilling trenches that do not exceed four feet in depth at any point. EXCEPTION - Minors age 16 or older may be issued a permit to work at excavation sites which are less than four (4) feet in depth.

Note: N/A indicates "not applicable." "No provision" as an entry under either employment or age certificate indicates that the issuance of such a certificate is unnecessary because another type of certificate covers all minors.

**Division of Communications**
**Wage and Hour Division**
**U.S. DEPARTMENT OF LABOR**

*This document was last revised in December 2010.*

## Table of State Child Labor Laws for Agricultural Employment

| State[1] | Minimum age for employment | | Certificate required to age: | | Maximum daily and weekly hours and days per week for minors under 16 unless other age indicated | |
|---|---|---|---|---|---|---|
| | during school hours | outside school hours | Employment certificate | Age certificate | Daily/Weekly | Days per week |
| **Federal**: Fair Labor Standards Act (FSLA) applies to migrants and local residents regardless of farm size or number of man-days of farm labor used on that farm. | 16 | 14, 12 with written parental consent or on farm where parent is employed. Under 12 with written parental consent on farms exempt from Federal minimum wage provisions * | proof of age not required | | --- | --- |
| **Alaska** | 16 | 14 | --- | 18 | schoolday or week: 9 for work and school combined /23 | 6 under 18 |
| **Arizona** | 16 | 14 | proof of age not required | | 8/40 non school period. schoolday or week: 3/18 | --- |
| **Arkansas** | 16 | 14 | 16 | --- | 8/48 10/54; 16 and 17 | 6 under 18 |
| **California** | 18,<br><br>16 if not required to attend school | 12 | 18 | --- | 8/40, only on non-schoolday, 12 and 13 8/40 schoolday/week: 3/18 8/48, 16 and 17 4 schoolday, (8 on a schoolday that precedes a non schoolday) 16 and 17 if required to attend school [2] | 6 |
| **Colorado** | 16 | 12 | --- | 18 on request | 8/40, under 18. 6 on | --- |

| State[1] | Minimum age for employment | | Certificate required to age: | | Maximum daily and weekly hours and days per week for minors under 16 unless other age indicated | |
|---|---|---|---|---|---|---|
| | during school hours | outside school hours | Employment certificate | Age certificate | Daily/Weekly | Days per week |
| | | | | | schoolday under 16. In seasonal employment involving perishable products where paid by piece- work, minors 14 or older may work up to 12 hours in a 24-hour period and up to 30 hours in a 72-hour period (not more than 8 hours a day for more than 10 days in any 30-day period). | |
| **Connecticut** (separate agriculture child labor law) | 16 | 14 | proof of age or agriculture permit required to age 16. | | 8/48 | 6 |
| **Delaware** (farm work exempt unless performed in hazardous occupations) | --- | --- | --- | --- | --- | --- |
| **Florida** | --- | 14 | --- | 18 (proof of age) | 8/40 schoolday or week: 3 when followed by schoolday /15. 8/30 when school is in session, 16 and 17. Minors under 16 can work 8-40 during non-school day or week. | 6 |
| **Hawaii** | 18, 16 if not legally required to attend | 14, 15 in pineapple harvesting<br>10 in | 16 | 18 applies only to 16 and | 6/30 no more than 5 consecutive days, under | 6 |

| State[1] | Minimum age for employment | | Certificate required to age: | | Maximum daily and weekly hours and days per week for minors under 16 unless other age indicated | |
|---|---|---|---|---|---|---|
| | during school hours | outside school hours | Employment certificate | Age certificate | Daily/Weekly | Days per week |
| | school | coffee harvesting | | 17 | 14 in coffee harvest in non-school period. 8/40; schoolday or week: 3/18, 14 and 15. 8/48 in pineapple harvesting from June 1 through the day before Labor Day. | |
| **Idaho** | 16 | --- | proof of age not required | | 9-54 | --- |
| **Illinois** (minimum age only) | 12 | 10 | --- | --- | --- | --- |
| **Indiana** (Exempt except for minimum age or when school is in session) | --- | 12 | --- | --- | --- | --- |
| **Iowa** (law exempts part-time work in agriculture (less than 20 hours a week when school is not in session and less than 14 hours a week while school is in session) It covers all migratory labor.<br>Law exempts work in the production of seed, limited to removal of off-type plants, corn tassels and hand-pollinating | 16 | 14, 12 migratory labor (younger with permit from Labor Commissioner upon court order) | 16 | --- | 8/40 Schoolday or week: 4/28 | --- |

| State[1] | Minimum age for employment | | Certificate required to age: | | Maximum daily and weekly hours and days per week for minors under 16 unless other age indicated | |
|---|---|---|---|---|---|---|
| | during school hours | outside school hours | Employment certificate | Age certificate | Daily/Weekly | Days per week |
| during June, July and August for children 14 and over. | | | | | | |
| **Maine** (exempt if not in direct contact with hazardous machinery or substances) | 16 unless excused by superintendant of schools | --- except 14 if in direct contact with hazardous machinery or substances | Exempt unless in direct contact with hazardous machinery or substances | --- | Exempt | Exempt |
| **Massachusetts** | 16 | --- | 16 | --- | Schoolday or week: 4/24, under 14 8/48 | 6 |
| **Michigan** (exempt except for operations involving detasseling, roguing, hoeing, or similar in production of seed) | 16 | 13 | Exempt | --- | 10/48 in non-school/week, (11/62 during a school vacation with parental consent) 16 and 17 48 combined hours of work and school in schoolweek, under 18 | 6 under 18 |
| **Minnesota** | 16 | 12 | 16 for work during school hours | 18 | Exempt | --- |
| **Missouri** | 16 | 14 | 16 during school term | 18 on request | 8/40 schoolday: 3 | 6 |
| **Nevada** (exempt except for minimum age when school in session) | 14 | --- | --- | --- | --- | --- |
| **New Hampshire** | 18, 16 if not enrolled in school | 12 | exempt | --- | 8 on non-schoolday/48 during vacation. | 6<br><br>16 and 17 if |

| State[1] | Minimum age for employment | | Certificate required to age: | | Maximum daily and weekly hours and days per week for minors under 16 unless other age indicated | |
|---|---|---|---|---|---|---|
| | during school hours | outside school hours | Employment certificate | Age certificate | Daily/Weekly | Days per week |
| | | | | | Schoolday/week: 3/23 if enrolled in school. 30 in schoolweek/48 during vacation, 16 and 17 if enrolled in school. | enrolled in school |
| **New Jersey** | 16 | 12 | 16 | --- | 10 a day | 6 |
| **New Mexico** | 16, 14 hardship cases | --- | 16 | 18 on request | 8/44 (special cases (8/48) under 14, | --- |
| **New York** | 16 | 14, 12 hand harvest berries, fruits and vegetables | 16 | --- | 4 a day, 12 and 13 | --- |
| **North Dakota** | 14 | --- | --- | --- | Exempt | Exempt |
| **Ohio** | 16 | 14 | 18 if residing in agriculture labor camp | --- | 8/40 schoolday/week: 3/18 | --- |
| **Oregon** | 16 | 12, 9 picking berries or beans for intrastate use with parental permission | Required only for under 18 employed in connection with power-driven farm machinery | --- | 10/40 (more than 10 hours a day with special permit) schoolday/week: 3/18 | 6 |
| **Pennsylvania** (exempt from child labor law. Separate law covers seasonal farm workers). | --- | --- seasonal farm worker under 14 not to be required to work | --- | --- | Employment prohibited from 7 a.m. to 1 hour after end of schoolday of school district where employed, under 18 | --- |

| State[1] | Minimum age for employment | | Certificate required to age: | | Maximum daily and weekly hours and days per week for minors under 16 unless other age indicated | |
|---|---|---|---|---|---|---|
| | during school hours | outside school hours | Employment certificate | Age certificate | Daily/Weekly | Days per week |
| | | | | | whether or not registered in such school district. | |
| **South Carolina** | 16 | 14, 12 with parental approval | proof of age not required | | Exempt | --- |
| **South Dakota** | --- | --- | --- | --- | 8/40 schoolday/week: 4/20 | --- |
| **Utah** | 16 | 12, no limit with parental consent | --- | 18 on request | 8/40, schoolday: 4 (waived with parental consent) | --- |
| **Vermont** | 16, 14 with cert. | --- | 16 during school hours | --- | 8/day and 40/week | 6/week |
| **Virginia** | 16 | 14, 12 with parental consent | Exempt | 16 on request | --- | --- |
| **Washington** | 18 | 14, 12 hand-harvesting or cult. berries, bulbs, cucumbers and spinach during non-school week. | 18 | --- | 8/40, 12 and 13 during non-schoolweek. 8/40 when school not in session, 14 and 15. 10/50 (60 for wheat, hay and pea harvest) when school not in session; 4/28 when school in session, 16 and 17. | 6<br><br>7 in dairy, livestock, hay and irrigation, with one day off every two weeks, under 18 |
| **Wisconsin** | 18 | 12 | Exempt | Exempt | 8/40 schoolday/week: 4 (8 before non-schoolday) /18 (24 school in session lass than 5 days) under 16. 5 (8 before non-schoolday) /26 (32 school in | 6<br><br>12 and 13 |

| State[1] | Minimum age for employment | | Certificate required to age: | | Maximum daily and weekly hours and days per week for minors under 16 unless other age indicated | |
|---|---|---|---|---|---|---|
| | during school hours | outside school hours | Employment certificate | Age certificate | Daily/Weekly | Days per week |
| | | | | | session less than 5 days) 16 and 17. Minors 14 through 17 may be employed outside of school hours in excess of permitted weekly hours during peak periods. Time and one-half regular rate of pay must be paid after 50 hours per week. | |

*Local minors (permanent residents) 10 and 11 years old may be employed outside school hours under prescribed conditions to hand harvest short season crops for no more than 8 weeks between June 1 and October 15 in any calendar year, upon approval by the Secretary of Labor of an employer's application for a waiver from the child labor provisions for such employment. The Secretary of Labor has not issued such waivers.

| State[1] | Nightwork prohibited for minors under 16 unless other age indicated | Prohibited hazardous occupations (HOs) in agriculture to age: |
|---|---|---|
| **Federal**: Fair Labor Standards Act (FSLA) applies to migrants and local residents regardless of farm size or number of man-days of farm labor used on that farm. | --- | 16. Numerous occupations have been declared hazardous in 11 categories of employment including, among others, operating tractors of over 20 PTO horsepower; operating or assisting to operate corn pickers, grain combines, hay movers, potato diggers, trenchers or earthmoving equipment, or power-driven circular, hand or chain saws; working in a yard, pen or stall occupied by a stud animal or a sow with suckling pigs; working inside a silo or manure pit; handling or applying certain agricultural chemicals; and handling or using a blasting agent such as dynamite or black powder. |
| **Alaska** | 9 p.m. to 5 a.m. | No specific agriculture HOs. Those of general application under 18 are considered as covering agriculture where applicable (e.g. working with power-driven machinery). |
| **Arizona** | 9:30 p.m. (11 p.m. before non-schoolday) to 6 a.m. | 16 (similar to Federal HOs) |
| **Arkansas** | 7 p.m. (9 p.m. before non-schoolday) to 6 a.m 11 p.m. before schoolday to 6 a.m., | No specific agriculture HOs. Those of general application for under 16 are considered as covering agriculture where applicable (e.g. working with unguarded belts and adjustable |

| State[1] | Nightwork prohibited for minors under 16 unless other age indicated | Prohibited hazardous occupations (HOs) in agriculture to age: |
|---|---|---|
| | 16 and 17 | belts) |
| **California** | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m. 10 p.m. (12:30 a.m. before non-schoolday) to 5:30 a.m., 16 and 17 | 16, adopts Federal HOs 12 work prohibited in any agriculture danger zone (areas in or about moving equipment, unprotected chemicals, and unprotected water hazard). |
| **Colorado** | 9:30 p.m. to 5 a.m. before schoolday | No specific agric. HOs. Those of general application for under 18 are considered as covering agric. where applicable (e.g. work 20 feet above ground, operation of power-driven machinery). |
| **Connecticut** (separate agriculture child labor law) | --- | No specific agric. HOs. Those of general application for under 18 are considered as covering agric. where applicable (e.g. work on ladders, operation of power-driven machinery). |
| **Delaware** (farm work exempt unless performed in hazardous occupations) | --- | 16 (adopts, by reference, the Federal HOs). Law exempts those working with adult supervision. |
| **Florida** | 7 p.m. before schoolday (9 p.m. during holidays and summer vacations) to 7 a.m. 11 p.m. to 6:30 a.m. before schoolday, 16 and 17. | 18, operating or assisting to operate a tractor over 20 PTO horsepower, any trencher or earthmoving equipment, forklift, or any harvesting, planting, or plowing machinery, or any moving machinery. 16, operation of power-driven machinery. |
| **Hawaii** | 6 p.m. to 6 a.m. during coffee harvest, under 14. 7 p.m. to 7 a.m. (9 p.m. to 6 a.m. during any authorized school break) 14 and 15, 12:30 a.m. to 6 a.m., 15 in pineapple harvest. | 16 (several), 15 pineapple harvestors prohibited from being on the harvesting machine or the truck attached to it, 12 prohibited from using any harvesting equipment while engaged in coffee harvesting except holding hooks which are free of any attachments or accessories and baskets or containers used to carry coffee berries. They are not allowed to carry loads in excess of 15 pounds. |
| **Idaho** | 9 p.m. to 6 a.m. | --- |
| **Illinois** (minimum age only) | --- | --- |
| **Indiana** (Exempt except for minimum age or when school is in session) | --- | --- |
| **Iowa** (law exempts part-time work in agriculture (less than 20 hours a week when school is not in | 7:30 p.m. (9 p.m. June 1 through Labor Day) to 5 a.m. with migratory labor permit | No specific agric. HOs. Those of general application for under 18 and under 16 are considered as covering migrant labor where applicable (e.g. power-driven hoisting apparatus - under 18, power-driven machinery - under 16). |

| State[1] | Nightwork prohibited for minors under 16 unless other age indicated | Prohibited hazardous occupations (HOs) in agriculture to age: |
|---|---|---|
| session and less than 14 hours a week while school is in session) It covers all migratory labor) | | |
| **Maine** (exempt if not in direct contact with hazardous machinery or substances) | Exempt | - (hazardous machinery or substances mentioned in exemption refers to occupations prohibited under Federal law) |
| **Massachusetts** | 7 p.m. (9 p.m. July 1 through Labor Day) to 6:30 a.m. | 16 operation of saw or cutter on a farm except family farm; stripping, sorting, manufacturing or packing tobacco. |
| **Michigan** (exempt except for operations involving detasseling, roguing, hoeing, or similar in production of seed) | 9 p.m. to 7 a.m., 10:30 p.m. (11:30 p.m. on Fridays, Saturdays and during school vacation periods) to 6 a.m., 16 and 17 if attending school, 11:30 p.m. to 6 a.m., 16 and 17 if not attending school | No specific agriculture HOs. Those of general application under 18 are considered as covering agriculture where applicable (e.g. working with power-driven machinery). |
| **Minnesota** | 9 p.m. to 7 a.m | 18 (a few) 16 (several including, by reference, the Federal HOs) |
| **Missouri** | 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m. | No specific agriculture HOs. Those of general application under 16 are considered as covering agriculture where applicable (e.g. working with power-driven machinery, ladders, toxic or hazardous chemicals). |
| **Montana** | 7PM (9PM during periods outside school year (June 1st - Labor Day- depending on local standards)) to 7AM | the following agricultural occupations, unless otherwise exempt or working as a student-learner pursuant to 41-2-109 are prohibited:<br>(a) felling, bucking, skidding, loading, or unloading timber with a butt diameter of more than 9 inches;<br>(b) repairing a building from a ladder or scaffold at a height of more than 20 feet;<br>(c) working inside:<br>(i) a fruit, forage, or grain storage structure designed to retain an oxygen-deficient or toxic atmosphere; or<br>(ii) an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;<br>(d) handling or using agricultural chemicals classified as poisonous;<br>(e) handling or using a blasting agent, including but not |

| State[1] | Nightwork prohibited for minors under 16 unless other age indicated | Prohibited hazardous occupations (HOs) in agriculture to age: |
|---|---|---|
| | | limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps, or primer cord; or<br>(f) transporting, transferring, or applying anhydrous ammonia. |
| **Nevada** (exempt except for minimum age when school in session) | --- | --- |
| **New Hampshire** | 9 p.m. to 7 a.m. | 16 (adopts, by reference, the Federal HOs) |
| **New Jersey** | --- | 18 (a few) 16 (a few) |
| **New Mexico** | 9 p.m. to 7 a.m., under 14 | No specific agriculture HOs. Those of general application under 16 are considered as covering agriculture where applicable (e.g. belted, moving, machinery). |
| **New York** | 4 p.m. to 9 a.m. day after Labor Day through June 20. 7 p.m. to 7 a.m. June 21 to Labor Day, 12 and 13. | 16, adopts Federal HOs |
| **North Dakota** | Exempt | -(Law specifies that minors under 16 are not to be prohibited from doing ordinary farm work or from operating farm machinery.) |
| **Ohio** | 7 p.m. (9 p.m. June 1 - Sept. 1 and during 5 or more schoolday holiday periods) to 7 a.m. 11 p.m. before schoolday to 7 a.m. on schoolday (6 a.m. if not employed after 8 p.m. pervious night), 16 and 17 if required to attend school. | 16 (same as Federal HOs) |
| **Oregon** | Exempt | 18 (16 with Certificate of Training) operating power-driven farm machinery of any kind; riding in or on power-driven farm machinery for the purpose of transporting, sorting, delivering, or otherwise processing farm products. State adopts Federal HOs. |
| **Pennsylvania** (exempt from child labor law. Separate law covers seasonal farm workers). | --- | --- |
| **South Carolina** | Exempt | 16 (same as Federal HOs) |
| **South Dakota** | After 10 p.m. before schoolday | --- |

| State[1] | Nightwork prohibited for minors under 16 unless other age indicated | Prohibited hazardous occupations (HOs) in agriculture to age: |
|---|---|---|
| **Utah** | 9:30 p.m. to 5 a.m. before schoolday (waived with parental consent) | With parental consent, no age limit for agriculture work, including operation of power-driven farm machinery. Otherwise, HOs of general application for under 18 are considered as covering agriculture where applicable (e.g. power-driven hoisting apparatus). |
| **Vermont** | Exempt | No specific agriculture HOs. Those of general application under 16 are considered as covering agriculture where applicable (e.g. operating a machine having an unguarded belt, adjusting belt- driven equipment, and cleaning machinery). |
| **Virginia** | --- | 18 (several) 16 (a few) (Generally the same as Federal HOs) Children 16 may operate, assist in operating, or otherwise perform work involving a truck, excluding a tractor trailer, or farm vehicle. Children 14 may perform work as a helper on a truck or commercial vehicle, while engaged in such work exclusively on a farm. |
| **Washington** | 9 p.m. to 5 a.m., 12 and 13 when school not in session. 6 p.m. to 7 a.m. (6 a.m. in dairy, livestock and irrigation) 14 and 15 on school day. 9 p.m. to 5 a.m., 14 and 15 on non-school day. 10 p.m. (9 p.m. on consecutive school nights preceding a school day) to 5 a.m., 16 and 17. | 18 (some) 16 (same as Federal HOs) |
| **Wisconsin** | 8 p.m. (9:30 p.m. before non-schoolday) to 5 a.m. 12 and 13. 8 p.m. (11 p.m. before non-schoolday) to 5 a.m. while school is in session, 8 hours of rest are required before the start of work the next day. | 16 (same as Federal HOs) |

--- No provision

[1] Agricultural employment is exempted from or is not listed among the covered sectors in the child labor laws of 17 states: Alabama, Delaware (non-hazardous employment), Georgia, Kansas, Kentucky, Louisiana, Maryland (non-hazardous employment), Mississippi, Montana, Nebraska (covers only work in detasseling and beet fields), North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, West Virginia (non-hazardous employment) and Wyoming. Laws generally exclude minors employed by parents on family farms.

[2] California. Until January 1, 2005, 16- and 17-year olds in Lake County who were employed in agricultural packing plants were permitted to work more than 48 hours, but no more than 60, in any 1 week with written approval of the Lake County Board of Education.

Prepared By:

**Division of Communications Wage and Hour Division U.S. Department of Labor**

This document was last revised in December 2010.

## Table of State Payday Requirements

| State | Weekly | Bi-weekly | Semi-monthly | Monthly |
|---|---|---|---|---|
| Alaska | | | X | X |
| Arizona | | | X3 | |
| Arkansas | | | X | |
| California | X9 | X9 | X | |
| Colorado | | | | X |
| Connecticut | X4 | | | |
| Delaware | | | | X |
| District of Columbia | | | X | |
| Georgia | | | X | |
| Hawaii | | | X | X5 |
| Idaho | | | | X |
| Illinois | | | X | X2 |
| Indiana | | X | | |
| Iowa | X | X6 | X | X |
| Kansas | | | | X |
| Kentucky | | | X | |
| Louisiana | | X | X7 | |
| Maine | | | X8 | |
| Maryland | | X | | |
| Massachusetts | X | X | | |
| Michigan 9 | X | X | | X |
| Minnesota | | | | X10 |
| Mississippi | | X11 | X11 | |
| Missouri | | | X | |
| Montana12 | | | | |
| Nebraska 13 | | | | |
| Nevada | | | X | X2 |
| New Hampshire | X | | | |
| New Jersey | | | X | |
| New Mexico | | | X | X2 |
| New York | X14 | | X14 | |
| North Carolina 15 | | | | |
| North Dakota | | | | X |
| Ohio | | | X | |
| Oklahoma | | | X | |

| State | Weekly | Bi-weekly | Semi-monthly | Monthly |
|---|---|---|---|---|
| **Oregon** | | | | **X** |
| **Pennsylvania** 13 | | | | |
| **Rhode Island** | **X** 16 | | | |
| **South Dakota** | | | | **X** |
| **Tennessee** | | | **X** | |
| **Texas** | | | **X** | **X**17 |
| **Utah** | | | **X**18 | |
| **Vermont** | **X** | **X**19 | **X**19 | |
| **Virginia** | | **X** 20 | **X**20 | **X**2 |
| **Washington** | | | | **X** |
| **West Virginia** | | **X** | | |
| **Wisconsin** | | | | **X** |
| **Wyoming** | | | **X** | |

1 Alabama and South Carolina. No regulations or not specified.

2 Illinois, Nevada, New Mexico and Virginia. Monthly payday requirements for Executive, Administrative, and Professional personnel.

3 Arizona. Payday two or more days in a month, not more than 16 days apart.

4 Connecticut. Longer interval (up to monthly) permitted if approved by labor commissioner.

5 Hawaii. Employees may choose to be paid on a monthly basis under special election procedure. Director of labor and industrial relations also may grant exceptions to the general semi-monthly payday requirement. Payday requirement applies only to private sector employment.

6 Iowa. Any predictable and reliable pay schedule is permitted as long as employees get paid at least monthly and no later than 12 days (excluding Sundays and legal holidays) from the end of the period when the wages were earned. This can be waived by written agreement; employees on commission have different requirements.

7 Louisiana. Applicable to entities engaged in manufacturing, mining, or boring for oil, employing 10 or more employees, and to every public service corporation. Payment is required once every two weeks or twice during each calendar month.

8 Maine. Payment due at regular intervals not to exceed 16 days.

9 California and Michigan. Frequency of payday depends on the occupation.

10 Minnesota. Employees engaged in transitory employment, i.e. migrant workers, which require an employee to change the employee's place of abode, because the employment is terminated either by the completion of the work or by the discharge or quitting of the employee must be paid within 24 hours.

11 Mississippi. Applicable to every entity engaged in manufacturing of any kind in the State employing 50 or more employees and employing public labor, and to every public service corporation doing business in the State. Payment is required once every two weeks or twice during each calendar month.

12 Montana. Wages must be paid within 10 business days after the wages are due and payable.

13 Nebraska and Pennsylvania. Payday designated by employer.

14 New York. Weekly payday for manual workers. Semi-monthly payday upon approval for manual workers and for clerical and other workers.

15 North Carolina. None specified, pay periods may be daily, weekly, bi-weekly, semi-monthly or monthly.

16 Rhode Island. Childcare providers shall have the option to be paid every two weeks.

17 Texas. Monthly payday for employees exempt from overtime provisions of the Fair Labor Standards Act.

18 Utah. Payments are to be paid at regular intervals, but in periods no longer than semi-monthly.

19 Vermont. Employers may implement bi-weekly and semi-monthly payday with written notice.

20 Virginia. Employees whose weekly wages total more than 150 percent of the average weekly wage of the Commonwealth may be paid monthly, upon agreement of each affected employee.

Note: South Carolina. Employers with 5 or more employees are required to give written notice at the time of hiring to all employees advising them of their wages agreed upon, and the time and place of payment along with their expected hours of work. The employer must pay on the normal time and at the place of payment established by the employer.

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# Additional Resources

**Text of the Regulations**

To read the complete text of the regulations visit:
http://www.dol.gov/dol/cfr/Title_29/Chapter_V.htm

**Toll-Free FLSA Helpline**

Call the WHD toll-free information and helpline at
1-866-4US-WAGE (1-866-487-9243)

**Local Wage and Hour Contact Information**

To find your local Wage and Hour office, visit:
http://www.dol.gov/whd/america2.htm

**Comprehensive FLSA Presentation (Microsoft® PowerPoint®)**

http://www.dol.gov/whd/flsa/comprehensive.ppt

**FLSA Overtime Calculator Advisor**

The Department developed this FLSA Overtime Calculator Advisor to help employees and employers understand the overtime pay requirements by calculating overtime for a sample pay period. This Advisor is designed as a learning tool for both employees and employers. It will provide a sample overtime pay calculation based on the information you provide.

http://www.dol.gov/elaws/esa/flsa/otcalc/i3.asp

**To subscribe to General Wage Determinations issued under the Davis-Bacon and Related Acts:**

The National Technical Information Service (NTIS) of the U.S. Department of Commerce offers Davis-Bacon, an online subscription service to provide the most comprehensive electronic access to official Department of Labor current wage determinations including a database download option. NTIS' Davis-Bacon subscribers can access NTIS' Davis-Bacon Wage Determinations online-system at http://www.wdol.gov/. For further information, you can contact NTIS at 1-800-363-2068.

The hard-copy subscriptions are available through the Government Printing Office (GPO), Superintendent of Documents. The hard-copy GPO version is available in seven volumes (for specific areas) and may be ordered for any or all of the seven areas. Inquiries regarding price and availability may be directed to the Superintendent of Documents Order Desk at 1-202-512-

1800. New subscribers will receive the current year's annual edition and all weekly updates for that calendar year regardless of when the order is placed.

**Full Time Student and Age Certificate**

For information on the limitations of a full-time student, or to obtain a certificate, contact the Department of Labor's Wage and Hour Division at 230 South Dearborn, Room 514, Chicago, Illinois, 60604; telephone: (312)596-7195.

**Special Minimum Wage Certificates**

Employers must obtain an authorizing certificate from the Wage and Hour Division prior to paying special minimum wages to employees who have disabilities for the work being performed. Employers shall submit a properly completed application (Form WH-226-MIS*(http://www.dol.gov/whd/forms/fts_wh226.htm)*, Application for Authority to Employ Workers with Disabilities at Special Minimum Wages) and the required supporting documentation to:

United States Department of Labor
Wage and Hour Division
230 South Dearborn Street, Room 514
Chicago, Illinois, 60604-1757
1-312-596-7195

Sample Certificate: http://www.dol.gov/whd/FOH/ch64/WH-228sample.pdf

**Poster for Employers Paying Special Wages for Employees with Disabilities**

Every employer of workers with disabilities under special minimum wage certificates authorized by the Fair Labor Standards Act, the McNamara-O'Hara Service Contract Act, and/or the Walsh-Healey Public Contracts Act must display a poster prescribed by the Wage and Hour Division explaining the conditions under which special minimum wages may be paid. The poster shall be posted in a conspicuous place on the employer's premises where employees and the parents or guardians of workers with disabilities can readily see it.

http://www.dol.gov/whd/regs/compliance/posters/disabc.pdf