

/* The following is the full text of the U.S. Labor Dept. Publication for Employees on their rights under minimum wage. */

Handy Reference Guide to the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting more than 73 million full-time and part-time workers in the private sector and in Federal, State, and local governments.

The Wage and Hour Division (Wage-Hour) administers and enforces FLSA with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. The Office of Personnel Management is responsible for enforcement with regard to all other Federal employees.

Special rules apply to State and local government employment involving fire protection and law enforcement activities, volunteer services, and compensatory time off in lieu of cash overtime pay.

Basic Wage Standards

Covered nonexempt workers are entitled to a minimum wage of not less than \$3.35 an hour and overtime pay at a rate of not less than one and one-half times their regular rates of pay after 40 hours of work in a workweek.

Wages required by FLSA are due on the regular pay day 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 to the extent that they reduce the wages of employees below the minimum rate required by FLSA or reduce the amount of overtime pay due under FLSA.

The FLSA contains some exemptions from these basic standards. Some apply to specific types of businesses; others apply to specific kinds of work.

While FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which FLSA does not regulate.

For example, 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) Any limit on the number of hours of work for persons 16 years of age and over.

These matters are for agreement between the employer and the employees or their authorized representatives.

Who is Covered?

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by FLSA.

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and is -

(1) engaged in laundering or cleaning or repairing of clothing or fabrics; or

(2) engaged in the business of construction or reconstruction; or

(3) engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises, a school for mentally or physically handicapped or gifted children, a preschool, an elementary or secondary school, or an institution or higher education (whether public or private or operated for profit or not for profit); or

(4) comprised exclusively of one or more retail or service establishments (as defined in FLSA) whose annual gross volume of sales made or business done is not less than \$362,500; or

(5) any other type of enterprise having an annual gross volume of sales made or business done of not less than \$250,000; or

(6) an activity of a public agency.

The dollar volume standard mentioned above in (4) and (5) excludes excise taxes at the retail level which are separately stated.

Employees of firms which are not covered enterprises under FLSA may still be subject to its minimum wage, overtime pay, and child labor provisions if they are individually engaged in interstate commerce. Such employees include those who: work in communications or transportation; regularly use the mails; telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship, or receive

goods moving in interstate commerce; regularly cross State lines in the course of employment; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.

Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time baby sitters are covered if they (1) receive at least \$50 in cash wages in a calendar quarter from their employers, or (2) work a total of more than 8 hours a week for one or more employers.

Tipped Employees

Tipped employees are those who customarily and regularly receive more than \$30 a month in tips.

The employer may consider tips as part of wages, but such a wage credit must not exceed 40 percent of the minimum wage.

The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. Also, employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

Employer-Furnished Facilities

The reasonable cost or fair value of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be considered part of wages.

Subminimum Wage Provisions

The FLSA provides for the employment of certain individuals at wage rates below the statutory minimum. Such individuals include student-learners (vocational education students), as well as full-time students in retail or service establishments, agriculture, or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by age or physical or mental deficiency or injury. Employment at less than the minimum wage is provided in order to prevent the curtailment of opportunities for employment. Such employment is permitted only under certificates issued by Wage-Hour.

Exemptions

Some employees are excluded from the overtime pay provisions or both the minimum wage and overtime pay provisions by specific exemptions.

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

offices. Following are examples which are illustrative but do not spell out 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), and outside sales persons (as defined in Department of Labor regulations);
- (2) Employees of certain individually owned and operated small retail or service establishments not part of a covered enterprise;
- (3) Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, switchboard operators of small telephone companies, seamen employed on foreign vessels, and employees engaged in fishing operations;
- (4) Farm workers employed by anyone who used no more than 500 "man-days" of farm labor in the calendar quarter of the preceding calendar year.
- (5) Casual babysitters and persons employed as companions to the elderly or infirm.

Exemptions from Overtime Pay Provisions Only

- (1) Certain highly-paid commissioned employees of retail or service establishments; auto, truck, trailer, farm implement, boat, or aircraft salesworkers, or parts-clerks and mechanics servicing autos, trucks, or farm implements, and who are employed by nonmanufacturing 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 nonmetropolitan broadcasting station;
- (4) Domestic service workers residing in the employer's residences;
- (5) Employees of motion picture theaters; and
- (6) Farmworkers.

Partial Exemptions from Overtime Pay

- (1) Partial overtime pay exemptions apply to employees engaged

in certain operations on agricultural commodities and employees of certain bulk petroleum distributors.

- (2) Hospitals and residential care establishments may adopt, by agreement with their employees, a 14-day work period in lieu 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.

Child Labor Provisions

The FLSA child labor provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include restrictions on hours of work for minors under 16 and lists of hazardous occupations orders for both farm and nonfarm jobs declared by the Secretary of Labor as being too dangerous for minors to perform. Further information on prohibited occupations is available from local Wage-Hour offices.

Nonagricultural Jobs

Regulations governing youth employment in nonfarm jobs differ somewhat from those pertaining to agricultural employment. In nonfarm work, the permissible jobs and hours of work, by age, are as follows:

- (1) Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;
- (2) Youths 16 and 17 years old may perform any nonhazardous job, for unlimited hours; and
- (3) Youths 14 and 15 years old may work outside school hours in various nonmanufacturing, nonmining, nonhazardous jobs under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a nonschool day, or 40 hours in a nonschool week. Also, work may not begin before 7 a.m., nor end after 7 p.m. except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Under a special provision, 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.)

Fourteen is the minimum age for most nonfarm work. However, at any age, youths may deliver newspapers; perform in radio, television, movie, or theatrical productions, work for parents in their solely-owned nonfarm business (except in manufacturing or on hazardous jobs); or, gather evergreens and make evergreen wreaths.

Farm Jobs

In farm work, permissible jobs and hours of work, by age, are as follows:

- (1) Youths 16 years and older may perform any job, whether hazardous or not, for unlimited hours;
- (2) Youths 14 and 15 years old may perform any nonhazardous farm job outside of school hours;
- (3) Youths 12 and 13 years old may work outside of schools hours in nonhazardous jobs, either with parent's written consent or on the same farm as the parents;
- (4) Youths under 12 years old may perform jobs on farms owned or operated by parents or, with parents' written consent, outside of school hours in nonhazardous jobs on farms not covered by minimum wage requirements.

Minors of any age may be employed by their parents at any time in any occupation on a farm owned or operated by their parents.

Recordkeeping

The FLSA requires employers to keep records on wages, hours, and other its, as specified in Department of Labor recordkeeping 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. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to both minimum wage and overtime pay provisions, the following records must be kept:

- (1) personal information, including employee's name, home address, occupation, sex and birth date (if under 19 years of age);
- (2) hour and day when workweek begins;
- (3) total hours worked each workday and each workweek;
- (4) total daily or weekly straight-time earnings;
- (5) regular hourly pay rate for any week when overtime is worked;
- (6) total overtime pay for the workweek;
- (7) deductions from or additions to wages;
- (8) total wages paid each pay period; and
- (9) date of payment and pay period covered.

Records required for exempt employees differ from those for nonexempt workers and special information is required for homeworkers, for employees working under uncommon pay arrangements, or for employees to whom lodging or other facilities are furnished.

Terms Used in FLSA

Workweek - A workweek is a period of 168 hours during 7 consecutive 24-hour periods. It may begin on any day of the week and any hour of the day established by the employer. Generally, for purposes of minimum wage and overtime payment each workweek stands alone; there can be no averaging of 2 or more workweeks. Employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis.

Hours Worked - Covered employees must be paid for all hours worked in a workweek. 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. Also included is any additional time the employee is suffered or permitted to work.

Computing 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 (excluding certain statutory exemptions). The following examples are based on a maximum 40-hour workweek.

(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 \$3.80 an hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times \$3.80, or \$5.70, for each hour over 40. Pay for the week would be \$152 for the first 40 hours, plus \$22.80 for the four hours of overtime - a total of \$174.80.

(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 the same 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 \$162. The regular rate of pay for that week is \$162 divided by 45, or \$3.60 an hour. In addition to the straight-time pay, the employee is entitled to \$1.80 (half the

regular rate) for each hour over 40.

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 overtime hours.

The piece rate must be the one actually paid during nonovertime 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.

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 \$200 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 \$4 (\$200 divided by 50 hours). In addition to the salary, half the regular rate, or \$2 is due for each of the 10 overtime hours, for a total of \$220 for the week. If the employee works 54 hours, the regular rate will be \$3.70 (\$200 divided by 54). In that case, an additional \$1.85 is due for each of the 14 overtime hours, for a total of \$225.90 for the week.

In no case may the regular rate be less than the minimum wage required by 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. If the salary is for a half month, it must be multiplied by 24 and the product divided by two weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

Enforcement

Wage-Hour's enforcement of FLSA is carried out by compliance officers stationed across the U.S. As Wage-Hour'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 FLSA. Where violations are found, they also may recommend changes in employment practices, in order to bring an employer into compliance with FLSA.

It is a violation of FLSA to fire or in any other manner discriminate against an employee for filing a complaint or for

participating in a legal proceeding under FLSA.

Willful violations may be prosecuted criminally and the violator fined up to \$10,000. A second conviction may result in imprisonment.

Violators of the child labor provisions are subject to a civil money penalty of up to \$1,000 for each violation.

Recovery of Back Wages

Listed below are methods which FLSA provides for recovering unpaid minimum and/or overtime wages.

- (1) Wage-Hour may supervise payment of back wages.
- (2) The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.
- (3) An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs.
- (4) The Secretary of Labor may obtain an injunction to restrain any person from violating FLSA, including the unlawful withholding of proper minimum wage and overtime pay.

An employee may not bring suit if he or she has been paid back wages under the supervision of Wage-Hour or if the Secretary of Labor has already filed suit to recover the wages.

A 2-year statute of limitations applies to the recovery of back pay, except in the case of willful violations, in which case a 3-year statute applies.

Other Labor Laws

In addition to FLSA, Wage-Hour enforces and administers a number of other labor laws. Among these are:

- (1) the Davis-Bacon and Related Acts (require payment of prevailing wage rates and fringe benefits on federally-financed or assisted construction);
- (2) the Walsh-Healey Public Contracts Act (requires payment of minimum wage rates and overtime pay on contracts to provide goods to the Federal government);
- (3) the Service Contract Act (requires payment of prevailing wage rates and fringe benefits on contracts to provide services to the Federal government);
- (4) the Contract Work Hours and Safety Standards Act (sets overtime standards for Federal service and construction contracts);

- (5) the Immigration Reform and Control Act (Wage-Hour is authorized to review the Immigration and Naturalization Service forms (I-9) required under the Immigration Reform and Control Act; employers must verify the employment eligibility of all individuals hired after November 6, 1986, and must keep I-9s on file for at least 3 years and for one year after an employee is terminated);
- (6) the Migrant and Seasonal Agricultural Worker Protection Act (protects farm workers by imposing certain requirements on agricultural employers and associations; and by requiring the registration of crewleaders who must also provide the same worker protections); and
- (7) the Wage Garnishment Law (limits amount of an individual's income that may be legally garnisheed and prohibits the firing of an employee whose pay is garnisheed for payment of a single debt).

More detailed information on FLSA and other laws administered by Wage-Hour is available from local Wage-Hour offices, which are listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration, Wage and Hour Division.

Equal Pay Provisions

The equal pay provisions of FLSA prohibit wage differentials based on sex, between men and women employed in the same establishment, on jobs that require equal skill, effort, and responsibility and which are performed under similar working conditions. These provisions, as well as other statutes prohibiting discrimination in employment, are enforced by the Equal Employment Opportunity Commission. More detailed information is available from its offices which are listed in most telephone directories under U.S. Government.