

Fair Labor Standards Act

Presented by the
U.S. Department of Labor
Wage and Hour Division


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Major Provisions

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



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Employment Relationship

In order for the FLSA to apply, there must be an employment relationship between the "employer" and the "employee"

Topics to consider: interns, volunteers, independent contractors. (Facts sheets 13, 71, and Opinion letter)




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Hours Worked

29 CFR Part 785

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Suffered or Permitted

Work not requested but suffered or permitted is work time




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Meal and Rest Periods

Meal periods are not hours worked when the employee is relieved of duties for the purpose of eating a meal

Rest periods of short duration (normally 5 to 20 minutes) are counted as hours worked and must be paid




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Overtime


29 CFR 778

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Overtime Pay

Covered, non-exempt employees must receive one and one-half times the regular rate of pay for all hours worked over forty in a workweek



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Regular Rate (RR)


Step 1: Total Straight Time Earnings (Minus Statutory Exclusions) Divided By Total Hours Worked = **Regular Rate**

Step 2: **Regular Rate** x .5 = Half Time Premium

Step 3: Half Time Premium x Overtime Hours = Total Overtime Premium Due



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Example: Hourly Rate + Production Bonus

Total Hours = 48
Hourly Rate = \$9.00
Bonus = \$10



48 hours x \$9.00=		\$432.00		
Bonus	+	10.00		
		\$442.00		

\$442.00 / 48 hrs =		\$9.21 (Regular Rate)		
\$9.21 x .5 =		\$4.61		
\$4.61 x 8 hrs =		\$36.88 (Overtime Due)		

Regular Rate Exclusions

- Sums paid as gifts
- Payments for time not worked
- Reimbursement for expenses
- Discretionary bonuses
- Profit sharing plans
- Retirement and insurance plans
- Overtime premium payments
- Stock options






Example: Different Hourly Rates

Janitor Rate \$8.50	Janitor Hours	21	
Cook Rate \$9.00	Cook Hours	26	

21 hours x \$8.50 =		\$178.50		
26 hours x \$9.00 =		\$234.00		
		\$412.50		

\$412.50 / 47 hours =		\$8.78 (Regular Rate)		
\$8.78 x 0.5 =		\$4.39		
\$4.39 x 7 hours =		\$30.73(Overtime Due)		

Youth Employment


29 CFR 570

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Youth Employment

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



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Youth Employment


16 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 Fourteen- and 15-year-olds 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




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Exemptions and Exceptions

There are numerous exemptions and exceptions from the minimum wage and/or overtime standards of the FLSA



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"White Collar" Exemptions


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"White Collar" Exemptions

The most common FLSA minimum wage and overtime exemption -- often called the "541" or "white collar" exemption -- applies to certain

- Executive Employees
- Administrative Employees
- Professional Employees
- Outside Sales Employees
- Computer Employees



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Three Tests for Exemption


Salary Level

Salary Basis

Job Duties




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Minimum Salary Level: \$455

- For most employees, the minimum salary level required for exemption is \$455 per week
- Must be paid "free and clear"
- The \$455 per week may be paid in equivalent amounts for periods longer than one week
 - **Biweekly:** **\$910.00**
 - **Semimonthly:** **\$985.83**
 - **Monthly:** **\$1,971.66**




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Salary Basis Test

- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- Need not be paid for any workweek when no work is performed



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Executive Duties

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision
- Customarily and regularly directs the work of two or more other employees
- Authority to hire or fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees given particular weight



Administrative Duties

- Primary duty is 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
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance




Professional Duties

- Primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction
- Primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor




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.
- The salary and salary basis requirements do not apply to bona fide teachers.




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Additional Information

- o Visit the WHD homepage at:
 - <http://www.dol.gov/whd/overtime/final2016>
 - www.wagehour.dol.gov
- Call the WHD toll-free information and helpline at
 - 1-866-4US-WAGE (1-866-487-9243)
 - **Call or email me: Steven McKinney:**
mckinney.steven@dol.gov, 603-606-3125
- Use the DOL interactive advisor system - *ELAWS* (Employment Laws Assistance for Workers and Small Businesses) at: www.dol.gov/elaws




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