

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



Employment Relationship

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



Coverage



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Coverage

More than 130 million workers in more than 7 million workplaces are protected or “**covered**” by the Fair Labor Standards Act (FLSA), which is enforced by the Wage and Hour Division of the U.S. Department of Labor



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Coverage

Two types of coverage

- Enterprise coverage: If an enterprise is covered, all employees of the enterprise are entitled to FLSA protections
- Individual coverage: Even if the enterprise is not covered, individual employees may be covered and entitled to FLSA protections



Enterprise Coverage

- Enterprises with
 - At least two (2) employees
 - At least \$500,000 a year in business
- Hospitals, businesses providing medical or nursing care for residents, schools, preschools and government agencies (federal, state, and local)



Individual Coverage

- Workers who are engaged in:
 - Interstate commerce;
 - Production of goods for commerce;
 - Closely-related process or occupation directly essential (CRADE) to such production; or
 - Domestic service
- Engaging in “interstate commerce” which may include:
 - Making telephone calls to other states
 - Typing letters to send to other states
 - Processing credit card transactions
 - Traveling to other states



The Bottom Line

- Almost every employee in the United States is covered by the FLSA
- Examples of employees who may not be covered
 - Employees working for small construction companies
 - Employees working for small independently owned retail or service businesses



Minimum Wage



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Minimum Wage: Basics

- Covered, non-exempt employees must be paid not less than the federal minimum wage for all hours worked
- The minimum wage is \$7.25 per hour effective July 24, 2009
- Cash or equivalent – free and clear



Minimum Wage: Issues

- Compensation Included
- Deductions
- Tipped Employees
- Hours Worked



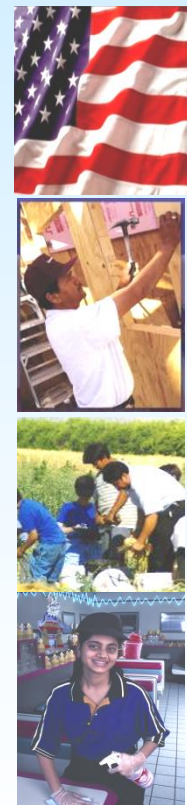
Deductions

Deductions from pay illegal if

- Deduction is for item considered primarily for the benefit or convenience of the employer; and
- The deduction reduces employee's earnings below required minimum wage

Examples of illegal deductions

- Tools used for work
- Damages to employer's property
- Cash register shortages



Hours Worked: Issues

- Suffered or Permitted
- Waiting Time
- On-Call Time
- Meal and Rest Periods
- Training Time
- Travel Time
- Sleep Time



Suffered or Permitted

Work not requested but suffered or permitted is work time



Waiting Time

Counted as hours worked when

- Employee is unable to use the time effectively for his or her own purposes; and
- Time is controlled by the employer

Not counted as hours worked when

- Employee is completely relieved from duty; and
- Time is long enough to enable the employee to use it effectively for his or her own purposes



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



Training Time

Time employees spend in meetings, lectures, or training is considered hours worked and must be paid, unless

- Attendance is outside regular working hours
- Attendance is voluntary
- The course, lecture, or meeting is not job related
- The employee does not perform any productive work during attendance



Travel Time

- Ordinary home to work travel is not work time
- Travel between job sites during the normal work day is work time
- Special rules apply to travel away from the employee's home community



Overtime



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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



Overtime Issues

- Each workweek stands alone
- Regular rate
 - Payments excluded from rate
 - Payments other than hourly rates
 - Tipped Employees
- Deductions



Workweek

- Compliance is determined by workweek, and each workweek stands by itself
- Workweek is 7 consecutive 24 hour periods (168 hours)



Exemptions and Exceptions

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



“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



Three Tests for Exemption

Salary Level

Salary Basis

Job Duties



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**



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
- Must be paid the full salary for any week in which the employee performs **any** work
- Need not be paid for any workweek when no work is performed



Deductions From Salary

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



Permitted Salary Deductions

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



Permitted Salary Deductions (continued)

Seven exceptions from the “no pay-docking” rule (cont.)

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 written 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



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



Additional Nonexempt Professions

- Licensed practical nurses
- Accounting clerks and bookkeepers who normally perform a great deal of routine work
- Cooks who perform predominantly routine mental, manual, mechanical or physical work
- Paralegals and legal assistants
- Engineering technicians



Recognized Field of Artistic or Creative Endeavor

- Music
 - Musicians, composers, conductors, soloists
- Writing
 - Essayists, novelists, short-story writers, play writers
 - Screen play writers who choose their own subjects
 - Responsible writing positions in advertising agencies
- Acting
- Graphic Arts
 - Painters, photographers, cartoonists



Computer Related Occupations

Primary duty is:

- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications
- 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;
- The design, documentation, testing, creation, or modification of computer programs related to machine operating systems
- A combination of the above requiring the same level of skills, and



Computer Related Occupations

The employee must also receive either

- A guaranteed salary or fee of \$455 per week or more, or
- An hourly rate of not less than \$27.63 per hour



Outside Sales

- Primary duty is
 - Making sales or
 - Obtaining orders or contracts for services or facilities for consideration paid by customer and
- Customarily and regularly engaged away from the employer's place(s) of business in performing such primary duty
- No compensation test



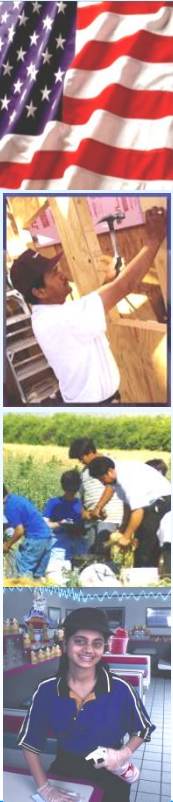
Introduction to the FMLA

Purpose:

- Balance work and family life
- Promote economic security of families and serve national interest in preserving family integrity

Shared Responsibilities:

- Communication is key



Employer Coverage

- Private sector employers with 50 or more employees
- Public Agencies
- Public and private elementary and secondary schools



Employee Eligibility

- Employed by covered employer
- Worked at least 12 months
- Have at least 1,250 hours of service during the 12 months before leave begins
- Employed at a work site with 50 employees within 75 miles



Recordkeeping

An accurate record of the hours worked each day and total hours worked each week is critical to avoiding compliance problems



Common Errors to Avoid



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Common Errors to Avoid

- Failing to include all pay required to be included in calculating the regular rate for overtime
- Failing to add all hours worked in separate establishments for the same employer when calculating overtime due



Common Errors to Avoid

- Making improper deductions from wages that cut into the required minimum wage or overtime. Examples: shortages, drive-offs, damage, tools, and uniforms
- Treating an employee as an independent contractor
- Confusing Federal law and State law



The FLSA Does Not Require

- Vacation, holiday, severance, or sick pay
- Meal or rest periods, holidays off, or vacations
- Premium pay for weekend or holiday work
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees
- Any limit on the number of hours in a day or days in a week an employee at least 16 years old may be required or scheduled to work
- Pay raises or fringe benefits



Compliance Assistance Materials - FLSA

- The Law
- The Regulations (29 C.F.R. Part 500-899)
- Interpretive Guidance (opinion letters, field operations handbook, and field bulletins)
- FLSA Poster
- Handy Reference Guide
- Fact Sheets
- Information for New Businesses
- Department of Labor Home Page



Enforcement

- FLSA enforcement is carried out by Wage and Hour staff throughout the U.S
- Where violations are found, Wage and Hour advises employers of the steps needed to correct violations, secures agreement to comply in the future and supervises voluntary payment of back wages as applicable
- A 2-year statute of limitations generally applies to the recovery of back pay. In the case of a willful violation, a 3-year statute of limitations may apply



Enforcement

In the event there is not a voluntary agreement to comply and/or pay back wages, the Wage and Hour Division may:

- Bring suit to obtain an injunction to restrain the employer from violating the FLSA, including the withholding of proper minimum wage and overtime
- Bring suit for back wages and an equal amount as liquidated damages



Employee Private Rights

An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs



Disclaimer

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