



WEBINAR



FLSA COMMON ISSUES TO AVOID

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UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

dol.gov/whd
1-866-487-9243

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FAIR LABOR STANDARDS ACT



UNITED STATES DEPARTMENT OF LABOR
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Wage and Hour Division

Disclaimer

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Major Provisions



Coverage



Youth
Employment



Minimum Wage

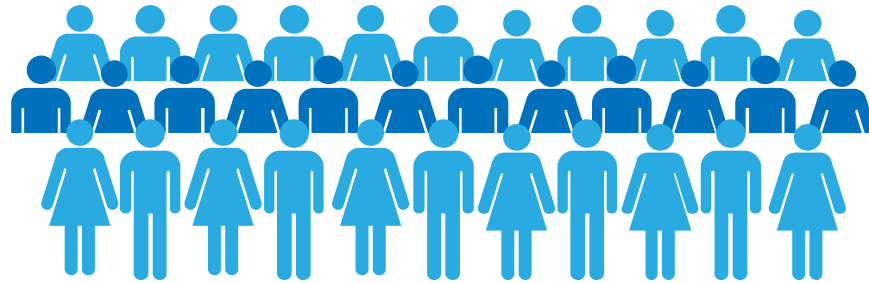


Recordkeeping



Overtime

Coverage



Over 135 million workers in more than 7 million workplaces protected or covered by the FLSA, enforced by the Wage and Hour Division of the U.S. Department of Labor

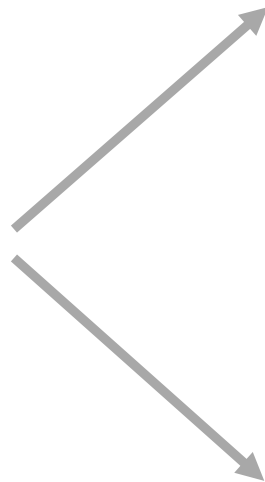


FACT SHEET:
FLSA Coverage

Coverage



Two Types
of Coverage



Enterprise Coverage

Enterprise, as a whole, is covered and all employees are entitled to FLSA protections



Individual Coverage

Enterprise, as a whole, is NOT covered; however individual employees are covered and entitled to FLSA protections

Enterprise Coverage



Enterprise coverage may apply to a business if:

- It engages in commercial activities that result in no less than \$500,000 in annual dollar volume (ADV), sales or total business, and
- It has two or more employees engaged in commerce or the production of goods for commerce

Individual Coverage



Employees of businesses not covered on an enterprise basis may still be covered individually

- The employee's activities, not the establishment's, determine coverage
- Individual coverage applies on a workweek basis

Individual Coverage

Includes workers engaged in:

- Interstate commerce, the production of goods for interstate commerce, or an activity that is closely related and directly essential to such production
- Domestic service, including home care
- Employees of non-profits may also be covered individually

Individual Coverage

Interstate commerce includes:

- Making out-of-state phone calls, or
- Receiving, sending interstate mail or electronic communications, or
- Ordering, receiving goods from out-of-state suppliers, or
- Handling credit card transactions, performing accounting or bookkeeping for such activities

FLSA Enforcement

Limits of the FLSA FLSA does ***NOT*** require

- Vacation, holiday, severance, sick pay
- Meal or rest periods, holidays off, vacations
- Premium pay for weekend or holiday work
- Discharge notice, reason for discharge
- Limit on number of hours or days employees 16 years or older may work
- Pay raises, fringe benefits

Minimum Wage



Covered, non-exempt employees must be paid at least the federal minimum wage, in cash or the equivalent, free and clear, for all hours worked

Current federal minimum wage

\$7.25

Minimum Wage

Minimum Wage Common Violations

- ***Compensation Included:*** Required minimum wage in cash and/or allowable equivalent
- ***Deductions:*** Illegal deductions from pay for items like cash register shortages, uniforms, errors, bad checks, etc..
- ***Tipped Employees:*** Tips not sufficient to make up the difference between the employer's direct wage obligation and the minimum wage; employees receiving tips only; and sharing a portion of tipped employees' tips with employees who are not eligible because they do not normally receive tips.
- ***Hours Worked:*** Work suffered or permitted not recorded, or paid

Minimum Wage

Compensation includes:

- Wages (salary, hourly and piece rates)
- Commissions
- Certain bonuses
- Tips received by eligible employees up to \$5.12 per hour (where the employer takes a tip credit)
- Reasonable cost of room, board, other “facilities” provided by employer for employee’s benefit

Minimum Wage

Lodging and Board – credit toward wages (known as the 3(m) credit)

- Primary benefit must be to the employee
- Cannot exceed actual costs
- Cannot include profit to employer
- Method of determining reasonable cost demonstrates good accounting practices
- Cannot take credit when no cost incurred
- *Additional requirements apply*

Minimum Wage

Deductions from pay are illegal if:

- For items that are primarily for the benefit or convenience of employer, and
- Deduction reduces employee earnings below required minimum wage

Examples of illegal deductions: deductions for tools, damages to property, cash register shortages





Minimum Wage

Exercise

Hourly Rate: \$8.00

Weekly Hours: 30

Employer-required uniform cost: \$30.00

Earnings: $(\$8.00) \times (30 \text{ hours}) =$ \$240.00

Less uniform charges: - \$30.00

Leaves worker with: \$210.00

$(\text{MW } \$7.25/\text{hour}) \times (30 \text{ Hours}) =$ \$217.50

Deduction for uniform takes wages below required MW

Minimum Wage

Tipped Employee

- Engaged in an occupation in which he or she customarily and regularly receives more than \$30 per month in tips
- Applied on an individual basis



FACT SHEET:
Tipped
Employees

Minimum Wage

Tip Credit

FLSA MW – Cash Wage Paid = Tip Credit

Employer may claim “tip credit” only if:

- Employee informed of tip credit allowance and amount of wage claimed as “tip credit”
- Employer documents sufficient tips received to bring total wage to at least minimum wage
- Tips retained by employee, not shared with employer or other employees except in valid tip pooling arrangement

Minimum Wage

Hours Worked Common Violations

- ***Suffered or Permitted:*** working “off the clock”
- ***Waiting Time:*** engaged to wait
- ***On-Call Time:*** not free from duty or employer control
- ***Meal and Rest Periods:*** not free from duty
- ***Training Time:*** unpaid training during work time
- ***Travel Time:*** unpaid travel between job sites
- ***Sleep Time:*** unpaid sleep in less than 24-hour shift

Minimum Wage

Hours Worked



An employee must be paid for all of the time considered to be “hours worked” under the FLSA.

This may include time spent engaged to wait, on-call, in training, or travelling, as well as sleep time.

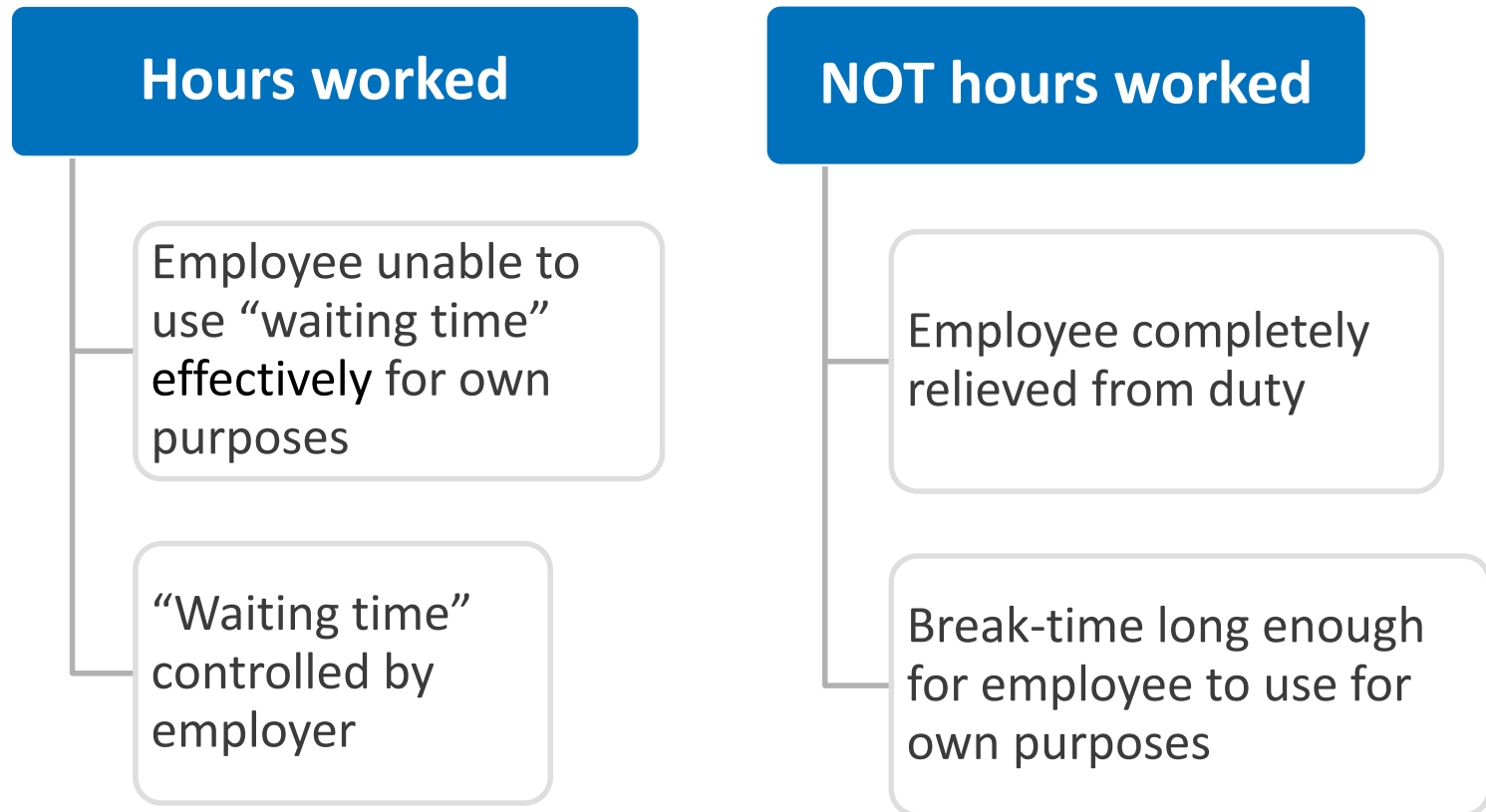
Work not requested but “suffered or permitted” is work time.



FACT SHEET:
Hours Worked

Minimum Wage

Waiting Time



Minimum Wage

On-Call Time

Hours worked

Employee must stay on employer premises

Or, must be so close time cannot be used effectively for own purposes

NOT hours worked

Employee must provide contact information

Can use time effectively for own purposes

Minimum Wage

Rest and Meal Periods

- Short rest breaks (20 min or less) are compensable
- Bona fide meal periods (typically 30 minutes or more) need not be paid as hours worked
- Worker must be completely relieved of duty for meal period not to be compensable time.

Minimum Wage

Training Time

Time spent in meetings, lectures or training is considered *hours worked* and must be paid, unless:

- Attendance outside regular work hours
- Attendance voluntary
- Course, lecture, meeting not job related, ***and***
- Employee does not perform any productive work

Minimum Wage

Travel Time

- Ordinary home to work travel is *not* compensable work time
- Travel between job sites during normal work day *is* work time and thus compensable hours worked
- Special rules apply to travel away from employee's home community

Minimum Wage

Sleep Time

Duty: Shifts of less than 24 hours:

Employee on duty for less than 24 hours is considered *working* even if allowed to sleep, engage personal pursuits; no sleep time deduction permitted

Duty: Shifts of 24 hours or more:

Parties can agree to exclude bona fide sleep periods, up to 8 hours, and only if certain conditions are met

Overtime

1½

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

All time that is hours worked must be counted when determining overtime hours worked.



Overtime

Common Overtime Violations

- **Regular Rate:** Failure to include production bonuses, shift differentials, piece rates in determining the regular rate for calculating OT compensation due
- **Combined hours, rates for dual jobs:** Failure to combine all hours in dual jobs or multiple sites of single employer
- **Tipped Employees:** Failure to calculate correct cash OT payment

Overtime

Common Overtime Violations

- **“White Collar” Exemptions:** Misapplication of exemption, or improper assumption that all salaried employees are exempt
- **Deductions:** Improper deductions in OT weeks
- **Misclassification:** Improper treatment of employee as independent contractor
- **Hours worked:** Failure to record, pay for all hours worked; deducting “sleep time” for front desk staff
- **State Law:** Confusion between state and federal law

Overtime



- Compliance determined by workweek
- Each workweek stands alone
- Workweek is 7 consecutive 24-hour periods (168 hours)

Overtime

Regular Rate

- Determined by dividing total earnings in workweek by total number of hours worked in workweek

$$\text{Total Compensation} \div \text{Total Hours Worked} = \text{RR}$$

- *Regular Rate* may not be less than the applicable minimum wage
- *Total earnings include commissions, certain bonuses, tips, and cost of room, board, and other facilities provided primarily for the employee's benefit*

Overtime

Exclusions from the *Regular Rate*

- Gifts, *discretionary* bonuses
- Payments for time not worked
- Reimbursements for expenses
- Profit sharing plans, stock options
- Retirement and insurance plan contributions
- Overtime premium payments

Overtime

Regular Rate and Premium Pay for OT Hours

STEP 1: Total compensation paid in a workweek
(minus statutory exclusions) divided by
total hours worked in the workweek

$$\text{Total Compensation} \div \text{Total Hours} = \text{RR}$$

STEP 2: $\text{RR} \times .5 = \text{Half-time Premium Pay per OT Hour}$

STEP 3: (Half-time) Premium Pay Rate \times Overtime Hours in
the Workweek = Overtime Compensation Due



Overtime

Exercise: Production Bonus

Hourly Rate:	\$9.00	$48\text{H} \times \$9 =$	\$432
Bonus per week:	\$10.00	$\$432 + \$10 =$	\$442
Hours worked:	48	$\$442 \div 48\text{H} =$	\$9.21 RR
		$\$9.21 \times .5 =$	\$4.61
		$\$4.61 \times 8\text{H} =$	\$36.88 OT
Total compensation for week:		$\$442 + \$36.88 =$	\$478.88



Overtime

Exercise: Different Hourly Rates

Janitor Rate:	\$8.50	21H x \$8.50 =	\$178.50
Janitor Hours:	21	26H x \$9.00 =	\$234.00
Cook Rate:	\$9.00	\$178.50 + \$234 =	\$412.50
Cook Hours:	26	\$412.50 ÷ 47H =	\$8.78 RR
Total Hours:	47	\$8.78 x .5 =	\$4.39
		\$4.39 x 7H =	\$30.73 OT
Total compensation for week:		\$412.50 + \$30.73 =	\$443.23



Overtime

Exercise: Piece Rates

Piece Rate Wages		46H @ Piece Rate:	\$391.00
for week :	\$391.00	4H x \$7.25 =	\$29.00
Piece Rate Hours:	46	Production Bonus:	\$12.50
Wait Time Rate:	\$7.25	Total ST Earnings:	\$432.50
Wait Time Hours:	4	\$432 ÷ 50H =	\$8.65 RR
Production Bonus		\$8.65 x .5 =	\$4.33
for week :	\$12.50	\$4.33 x 10H =	\$43.30 OT
Total Hours Worked:	50		
Total compensation for week:		\$432.50 + \$43.30 =	\$475.80



Overtime

Exercise: Salary for Fixed Hours

Weekly Salary for		$\$420 \div 40 =$	\$10.50 RR
40 hours:	\$420.00	$\$10.50 \times 1.5 =$	\$15.75 OT Rate
Fixed Hours:	40	$\$15.75 \times 8H =$	\$126.00 OT
Hours Worked		$\$420 + \$126 =$	\$546.00 Total
that workweek:	48		compensation due, including OT



Overtime

Exercise: Fixed Salary for Fluctuating Hours

**Weekly Salary-for all
hours worked:** \$420.00

$$\$420 \div 49H = \$8.57 \text{ RR}$$

Week 1

Hours Worked: 49

Additional Half-Time Rate:

$$\$8.57 \times .5 = \$4.29$$

$$\$4.29 \times 9H = \$38.61 \text{ OT}$$

$$\$420 + \$38.61 = \$458.61 \text{ Total compensation due for Week 1}$$



Overtime

Exercise: Fixed Salary for Fluctuating Hours

Weekly Salary-for all

hours worked : \$420.00 $\$420 \div 41H =$ **\$10.24 RR**

Week 2

Hours Worked: 41

Additional Half-Time Rate:

$\$10.24 \times .5 =$ **\$5.12**

$\$5.12 \times 1H =$ **\$5.12 OT**

$\$420 + \$5.12 =$ **\$425.12 Total
compensation due for Week 2**

Overtime

Deductions in Overtime Workweeks

Board, Lodging and Facilities

- Lodging must be regularly provided by the employer or similar employers
- Employee must voluntarily accept lodging
- Lodging furnished in compliance with federal, state or local laws
- Lodging primarily for the benefit of employee
- Employer maintains accurate records of costs incurred in furnishing of lodging

Overtime

Deductions in Overtime Workweeks

Items OTHER THAN Board, Lodging, and Facilities

Deduction allowed if:

- Bona fide
- Made under prior agreement
- Purpose not to evade overtime requirements, other laws
- Limited to amount above highest applicable minimum wage for first 40 hours

Overtime

Exemptions

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

One of the most common FLSA minimum wage and overtime exemptions is often called the “**541**” or “**white collar**” exemption



Recordkeeping



- All employers subject to any provision of the FLSA must make, keep, and preserve certain records
- Time clocks are not required and records need not be kept in any particular form
- Every covered employer must keep basic records for each worker, with additional requirements for non-exempt workers



FACT SHEET:
Recordkeeping
Requirements

Recordkeeping

“Basic records” that a covered employer must keep for each non-exempt worker include:

- Full name, sex , DOB if younger than 19
- Regular rate of pay, total hours worked, total daily or weekly straight-time earnings, total overtime compensation, if any
- Deductions, date of payment and pay period for payment

Recordkeeping

Posting

Covered employers must post a notice explaining the FLSA, as prescribed by the Wage and Hour Division, in a conspicuous place such as a lunch room or employee lounge area.

To download poster electronically:

FLSA Poster.pdf

To request by phone call:

1-866-487-9243

FLSA Enforcement



- Carried out by the Wage and Hour Division in the U.S. and territories
- If violations found, the Wage and Hour Division secures agreement to comply in future, supervises voluntary payment of back pay as applicable



FACT SHEET:
Visits to
Employers

FLSA Enforcement

- 2-year statute of limitations generally applies to back pay recovery; if willful violation, a 3-year statute of limitations may apply
- If voluntary agreement not obtained, the Wage and Hour Division may bring suit to restrain employer from violating FLSA and/or obtain back wages and liquidated damages
- Employees may file private suit for back pay, liquidated damages, plus attorney and court fees

FLSA Enforcement

Penalties

- Willful violations may be prosecuted with fines amounting to thousands of dollars
- Violators of youth employment are subject to civil money penalties
- Willful, repeat violations of minimum wage or overtime requirements subject to civil money penalties for each violation

Civil Money Penalties Chart

FLSA Compliance Assistance

Fair Labor Standards Act of 1938

Regulations

FLSA Poster.pdf

Handy Reference Guide.pdf

Frequently Asked Questions (FAQs)

Fact Sheets

Visit the WHD home page: www.dol.gov/whd

FLSA Compliance Assistance

- Call WHD toll free information and helpline:
1-866-4US-WAGE (1-866-487-9243)
- Call or visit the nearest Wage and Hour
Division Office: WHD Offices
- Employment Laws Assistance for Workers
and Small Businesses (ELAWS): Elaws



WEBINAR



Questions?

WHD Information and Helpline

1-866-4US-WAGE (1-866-487-9243)

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