



WEBINAR



WHAT YOU NEED TO KNOW ABOUT FLSA JOINT EMPLOYMENT OF EMPLOYEES

Presenters: Rachel Mast-Matos and Susan Denham



UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

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

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UNITED STATES DEPARTMENT OF LABOR
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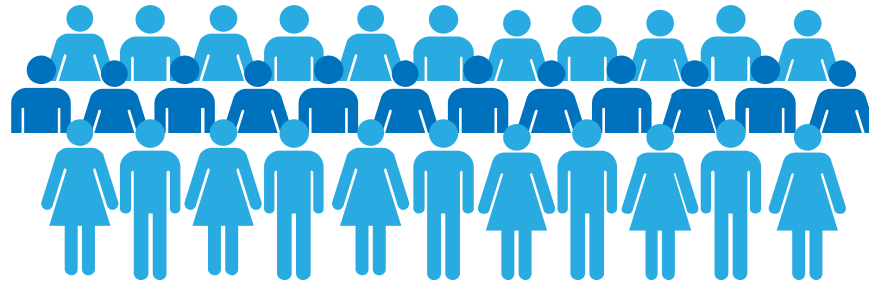
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Wage and Hour Division

Disclaimer

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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

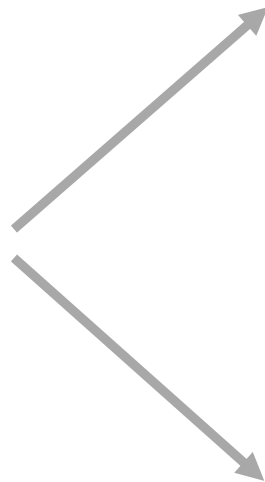


FACT SHEET:
FLSA Coverage

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

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

Employment Relationship

- A common problem arises where employers misclassify workers who are employees under the law as independent contractors.
- Studies suggest that 10 to 30 percent of employers may misclassify their employees as independent contractors.

Employment Relationship

- The economic reality of the worker's relationship with the employer determines whether the worker is economically dependent on the employer or is in business for himself or herself.
- Courts generally apply a number of "economic realities" factors as guides when making the determination, but the factors applied can vary and no one set of factors is exclusive.

Employment Relationship

We generally consider the following factors when determining if a worker is an employee or independent contractor:

1. Is the work an integral part of the employer's business?
2. Does the worker's managerial skill affect his or her opportunity for profit and loss?
3. Relative investments of the worker and the employer
4. The worker's skill and initiative
5. The permanency of the worker's relationship with the employer
6. Employer control of employment relationship

Employment Relationship



Myth 1: If I am an independent contractor under one law, I am an independent contractor under other laws.



Myth 2: If I am classified as an independent contractor, I am not eligible for unemployment insurance (UI).



Myth 3: I received a 1099 tax form from my employer, and this makes me an independent contractor.



Myth 4: It does not make a difference if I am classified as an independent contractor or an employee.



Myth 5: I am an independent contractor because I signed an independent contractor agreement.



Myth 6: I am not on the payroll, so I am not an employee.

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



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Questions?

WHD Information and Helpline

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

Rachel Humphrey
COO & VP Franchise Relations
AAHOA

rachel@aahoa.com
(404) 419-8985



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