



WEBINAR



WHITE COLLAR EXEMPTIONS FOR HOTEL OWNERS

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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
WAGE AND HOUR DIVISION

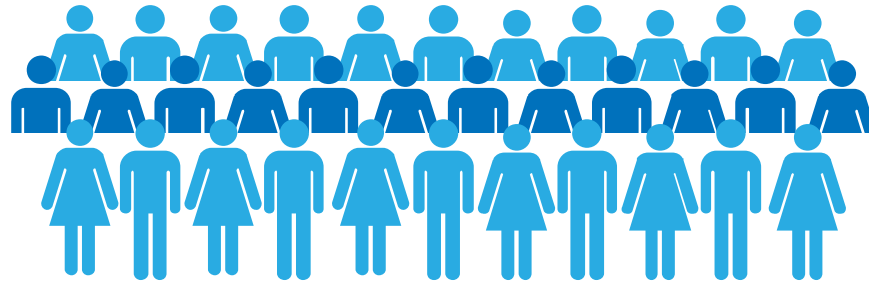
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Wage and Hour Division

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

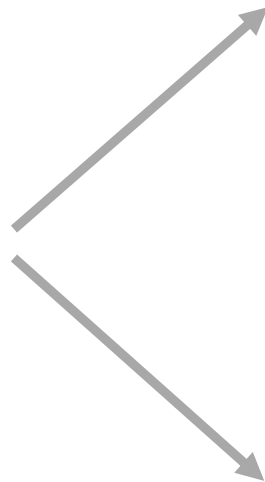


FACT SHEET:
FLSA Coverage

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

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



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



Overtime

Three Tests for the “White Collar” Exemptions



**FACT
SHEET:**
Blue Collar
Workers

Overtime



Overtime

Salary Level Test

For most employees the minimum salary level required for exemption is **\$455.00 per week**

It may be paid in equivalent amounts for longer periods

Bi-weekly: \$910.00

Semi-monthly: \$985.83

Monthly: \$1971.66



Overtime

Salary Basis Test

- Regular, predetermined amount of compensation paid each pay period, on weekly or less frequent basis
- Compensation cannot be reduced due to variations in quality or quantity of work performed
- Compensation not required for any workweek when no work performed



**FACT
SHEET:**
Salary Basis

Overtime



Overtime

Deductions from Salary *Not permissible*

- Deductions from predetermined salary for absences occasioned by employer for operating requirements of business
- Work not available, but employee ready, willing and able to work



Overtime

“White Collar” Exemption: Executive Duties

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



FACT SHEET:
Executive Duties
Exemption

Overtime



Overtime

“White Collar” Exemption: Administrative Duties Primary duty

- Office or non-manual work directly related to the *management or general business operations* of the employer or the employer’s customers; and
- Exercise of discretion and independent judgment in matters of significance
 - Includes activities such as analysis, making determinations, setting prices, assessing risk, committing company resources, negotiating, and similar tasks



FACT SHEET:
Administrative Duties
Exemption

Overtime



Overtime

“White Collar” Exemption: Administrative Duties *Management or General Business Operations* Includes:

- Tax, Finance, Budgeting, Accounting
- Auditing, Legal and Regulatory Compliance
- Quality Control, Insurance, Safety and Health
- Purchasing, Procurement
- Advertising, Marketing, Research
- Human Resources, Labor Relations, Benefits
- Computer Network, Internet, Database Administration



FACT SHEET:
Administrative Duties
Test

Overtime



Overtime

“White Collar” Exemption: Professional Duties Primary duty

- Performance of work requiring advanced knowledge in field of science or learning customarily acquired by a prolonged course of specialized instruction; or
- Performance of work requiring invention, imagination, originality, or talent in recognized artistic or creative field.



FACT SHEET:
Professional
Exemption

Overtime



Overtime

“White Collar” Exemption: Professional Duties *Field of Science or Learning*



Occupations with recognized professional status, as distinguished from mechanical arts or skilled trades



Overtime

“White Collar” Exemption: Professional Duties **Other commonly exempt professions**

- Lawyers
- Teachers
- Accountants
- Pharmacists
- Engineers
- Actuaries
- Chefs
- Certified Athletic Trainers
- Licensed Funeral Directors
- Embalmers



Overtime

Non-Exempt Professions

Common errors: misapplication of exemptions

- Licensed Practical Nurses
- Paralegals, legal assistants
- Engineering Technicians
- Accounting clerks, bookkeepers typically performing routine work
- Cooks performing predominantly routine mental, manual, mechanical, or physical work



FACT SHEET:
Technologists &
Technicians

Overtime



Overtime

“White Collar” Exemption: Professional Duties *Recognized Field of Artistic or Creative Endeavor*

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



Overtime

“White Collar” Exemption: Computer-related Occupations

Primary duty

- Application of systems analysis techniques and procedures, including consultation with users about hardware, software, or system function specifications;
- Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs related to user or system design specifications;
- Design, documentation, testing creation, or modification of machine operating systems; or
- Combination of above duties requiring equal skill level



FACT SHEET:
Computer-Related
Exemption

Overtime



Overtime

“White Collar” Exemption: Outside Sales Primary duty

- Making sales or
- Obtaining orders or contracts for services for the use of facilities paid by the customer and
- Customarily and regularly working-away from employer’s place of business

There is no salary test for the outside sales exemption



FACT SHEET:
Outside Sales
Exemption

Overtime



Overtime

Exemption for Employees Paid Commissions by Retail Establishments

Employee is exempt from overtime pay if:

- Employed by a *retail or service establishment*;
- More than half employee's total earnings in *representative period* are commissions on goods, services; and
- Total compensation divided by number of hours worked, or regular rate, *exceeds one and one-half times the minimum wage*

If all conditions are not met, exemption does not apply



FACT SHEET:
Commissioned
Sales
Exemption

Overtime

Exemption for Employees Paid Commissions by Retail Establishments

Retail or Service Establishment

An establishment is a retail or service establishment if at least 75% of its annual dollar volume of sales of goods, services or both:

- is not for resale; and
- is recognized as retail sales or services in the particular industry

Overtime

Exemption for Employees Paid Commissions by Retail Establishments

Representative Period

- Representative period may be as short as one month, cannot be greater than one year
- Employer selects representative period
- More than half of the employee's earnings during the representative period must be commissions

Overtime

Exemption for Employees Paid Commissions by Retail Establishments

*Regular Rate More than One and One-Half Minimum
Wage*

To determine:

Divide employee's total earnings by
total hours worked within workweek

$$(\text{Total Earnings} \div \text{Total Hours}) > (\text{MW} \times 1.5)$$

For the exemption to apply in a particular workweek, the employee's regular rate must exceed one and one-half times the minimum wage in that workweek

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)

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