

Fair Labor Standards Act (FLSA)

The law requires employers to display both the Federal Minimum Wage as well as their State Minimum Wage where employees can readily see it.

WHAT YOU NEED TO KNOW ABOUT THE FAIR LABOR STANDARDS ACT (FLSA)

The Fair Labor Standards Act establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in federal, state, and local governments.

CHILD LABOR PROVISIONS

The FLSA child labor provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs under conditions detrimental to their health or well-being. The provisions include restrictions on hours of work for minors under 16 and lists of hazardous occupations orders for both farm and non-farm jobs declared by the Secretary of Labor to be too dangerous for minors to perform. No persons under 16 may be employed in manufacturing or on a PCA contract. Special provisions of GSA contracts may restrict the employment of persons under 16. These provisions may be incorporated by reference even if not specifically stated in a GSA contract.

Other state laws may have higher standards. When these apply, the more stringent standard must be observed. All states have child labor provisions and compulsory school attendance laws. Unless otherwise exempt, a covered minor employee is entitled to receive the same minimum wage, overtime, safety and health, and non-discrimination protections as adult workers.

Regulations governing child labor in non-farm jobs differ somewhat from those pertaining to agricultural

employment. In non-farm work, the permissible jobs and hours of work, by age, are as follows:

1. Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;
2. Minors 16 and 17 years old may perform any non-hazardous job, for unlimited hours; and
3. Minors 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a non-school day, or 40 hours in a non-school week. Also, work may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m.
4. States may require the written authorization of, or notice to, the minor's school prior to starting work. Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.

TIPPED EMPLOYEES UNDER THE FLSA

An employer of a tipped employee is only required to pay \$2.13 an hour in direct wages if that amount, plus the tips received, equals at least the federal minimum wage, the employee retains all tips and the employee customarily and regularly receives more than \$30 a month in tips. If an employee's tips combined with the employer's direct wages of at least \$2.13 an hour do not equal the federal minimum hourly wage, the employer must make up the difference. State law may adjust this rate (but not below \$2.13 per hour).

Some states have minimum wage laws specific to tipped employees. Under the Consolidated Appropriations Act of 2018, an employer is prohibited from using an employee's tips for any reason other than as a credit against its minimum wage obligation to the employee ("tip credit") or in furtherance of a valid tip pool. Only tips actually received by the employee may be counted in determining whether the employee is a tipped employee and in applying the tip credit. As of May 2021, employers who do not take a tip credit need to update their recordkeeping to include non-tipped workers.

CONTINUED >>>

Fair Labor Standards Act (FLSA)

EMPLOYMENT RIGHTS FOR WORKERS WITH DISABILITIES PAID AT SPECIAL MINIMUM WAGES

The United States Department of Labor Wage and Hour Division

Authority to pay special minimum wages to workers with disabilities applies to work covered by the Fair Labor Standards Act (FLSA), McNamara-O’Hara Service Contract Act (SCA), and/or Walsh-Healey Public Contracts Act (PCA). Such special minimum wages are referred to as “commensurate wage rates” and are less than the basic hourly rates stated in an SCA wage determination and less than the FLSA minimum wage of \$7.25 per hour. A “commensurate wage rate” is based on the worker’s individual productivity, no matter how limited, in proportion to the wage and productivity of experienced workers who do not have disabilities that impact their productivity when performing essentially the same type, quality, and quantity of work in the geographic area from which the labor force of the community is drawn.

The wages of all workers paid commensurate wages must be reviewed, and adjusted if appropriate, at periodic intervals. At a minimum, the productivity of hourly-paid workers must be reevaluated at least every six months and a new prevailing wage survey must be conducted at least once every twelve months. In addition, prevailing wages must be reviewed, and adjusted as appropriate, whenever the applicable state or federal minimum wage is increased.

Fringe Benefits

Neither the FLSA nor the PCA have provisions requiring

vacation, holiday, or sick pay nor other fringe benefits such as health insurance or pension plans. State laws may set forth other requirements related to such fringe benefits. SCA wage determinations may require such fringe benefit payments (or a cash equivalent). Workers paid under a certificate authorizing commensurate wage rates must receive the full fringe benefits listed on the wage determination.

Worker Notification

Each worker with a disability and, where appropriate, the parent or guardian of such worker, shall be informed orally and in writing by the employer of the terms of the certificate under which such worker is employed. This will be provided at the time of hire, or if a disability arises during employment. Such a certificate will be provided by the employer after being notified of the disability.

Petition Process

Workers with disabilities paid at special minimum wages may petition the Administrator of the Wage and Hour Division of the Department of Labor for a review of their wage rates by an Administrative Law Judge. No particular form of petition is required, except that it must be signed by the worker with a disability or his or her parent or guardian and should contain the name and address of the employer. Petitions should be mailed to: Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

BREAK TIME FOR NURSING MOTHERS UNDER THE FLSA

This notice provides general information on the break time requirement for nursing mothers in the Patient Protection and Affordable Care Act (“PPACA”), which amended Section 7 of the Fair Labor Standards Act (FLSA).

Employers are required to provide “reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk.” The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

Employers are also required to provide “a place, other than a

bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.” If the space is not dedicated to the nursing mother’s use, it must be available for the exclusive use of nursing mothers temporarily when needed in order to meet the statutory requirement.

The FLSA requirement of break time for nursing mothers to express breast milk does not preempt state laws that provide greater protections to employees. The law also prohibits retaliation against employees who file a or participate in a complaint under the FLSA.

CONTINUED >>>

Fair Labor Standards Act (FLSA)

SALARY BASIS POLICY

Salary Basis Requirement

To qualify for an overtime exemption, employees generally must be paid at not less than \$684 per week on a salary basis. (Note: Some states require a lower minimum salary to qualify as exempt). Being paid on a “salary basis” means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee’s work. Subject to certain exceptions, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked.

Exempt employees do not need to be paid for any workweek in which they perform no work. If the employer makes deductions from an employee’s predetermined salary, that employee is not paid on a “salary basis.” If the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

Salary Deductions Policy

Deductions from pay are permissible under certain circumstances:

- When an exempt employee is absent from work for one or more full days for personal reasons other than sickness or disability;
- For absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for salary lost due to illness;
- To offset amounts employees receive as jury or witness fees, or for temporary military duty pay;
- For penalties imposed in good faith for infractions of safety rules of major significance;
- For unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions;
- In the employee’s initial or terminal week of employment if the employee does not work the full week; or
- For unpaid leave taken by the employee under the Federal Family and Medical Leave Act.

EMPLOYMENT RELATIONSHIP CLASSIFICATION

An employment relationship under the FLSA must be distinguished from a strictly contractual one. Such a relationship must exist for any provision of the FLSA to apply to any person engaged in work which may otherwise be subject to the Act.

Independent Contractors vs. Employees

The Court has held that it is the total activity or situation which controls the classification of the employment relationship. Among the factors which the Court has considered significant are:

1) The extent to which the services rendered are an integral part of the principal’s business.

- 2) The permanency of the relationship.
- 3) The amount of the alleged contractor’s investment in facilities and equipment.
- 4) The nature and degree of control by the principal.
- 5) The alleged contractor’s opportunities for profit and loss.
- 6) The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
- 7) The degree of independent business organization and operation.

CONTINUED >>>

Fair Labor Standards Act (FLSA)

OVERTIME EXEMPTIONS

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. Further information from the Department of Labor on FLSA exemptions at www.dol.gov.

Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional, and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$684 per week. Updates to the per-weekly minimum are published occasionally by the Department of Labor at www.dol.gov. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the DOL's regulations.

Executive Exemption

To qualify for the executive exemption, all of the following tests must be met:

- Compensated on a salary basis at a rate not less than \$684 per week;
- Primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- Customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- Have the authority to hire or fire other employees, or recommend the hiring, firing, or any other change of status of other.

Administrative Exemption

To qualify for the administrative exemption, all of the following tests must be met:

- Compensated on a salary or fee basis at a rate not less than \$684 per week;
- Primary duty must be performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- Primary duty includes exercising discretion and independent judgment with respect to matters of significance.

Professional Exemption

To qualify for the learned professional exemption, all of the following tests must be met:

- Compensated on a salary or fee basis at a rate not less than \$684 per week;
- Primary duty must be performing work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.
- To qualify for the creative professional employee exemption, all of the following tests must be met:
- Compensated on a salary or fee basis at a rate not less than \$684 per week;
- Primary duty must be performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

CONTINUED >>>

Fair Labor Standards Act (FLSA)

OVERTIME EXEMPTIONS Continued

Computer Employee Exemption

To qualify for the computer exemption, the following tests must be met:

- Compensated either on a salary or fee basis at a rate not less than \$684 per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- Employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
 1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 2. 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;
 3. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 4. A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Employees

To qualify for the outside sales exemption, all of the following tests must be met:

- Primary duty must be making sales, or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- Customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$107,432 or more [which must include at least \$684 per week paid on a salary or fee basis] are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption. The wage required to qualify as a highly compensated employee may be adjusted from time to time.

State-Specific Criteria

Some states have their own overtime exemption rules that are more stringent than the federal FLSA. Where an employee is subject to both state and federal overtime laws, the employee is entitled to overtime according to the one that is most beneficial to them. A state exemption may not be used to treat an employee less favorably than the employee would be treated under the federal FLSA. State law may adjust this rate (but not below \$2.13 per hour).

CONTINUED >>>

Fair Labor Standards Act (FLSA)

THE FEDERAL MINIMUM WAGE RATE IS \$7.25 PER HOUR FOR NON-TIPPED EMPLOYEES

STATE MINIMUM WAGE RATES

Where federal and state law have different minimum wage rates, the higher standard applies.

Premium pay is additional pay authorized by Title 5, United States Code, for overtime (in excess of 40 hours a week unless otherwise indicated), night, holiday, Sunday work, and other types of work.

The following list of state minimum wage rates is current as of October 2022.

| STATE | Min. Wage | STATE | Min. Wage | STATE | Min. Wage |
|---|-----------|--|-----------|--|-----------|
| Alabama | \$7.25 | Louisiana | \$7.25 | Ohio | |
| Alaska | \$10.34 | Maine | \$12.75 | -Employers with annual gross receipts of \$305,000 or more | \$9.30 |
| Arizona | \$12.80 | Maryland | | -Employers with annual gross receipts under \$305,000 | \$7.25 |
| Arkansas (4+ employees) | \$11.00 | -15 or more employees | \$12.50 | Oklahoma | |
| California | | -14 or fewer employees | \$12.20 | -10+ employees or gross sales > \$100,000 | \$7.25 |
| -Large employers (26 or more employees) | \$15.00 | Massachusetts | \$14.25 | -All other employers | \$2.00 |
| -Small employers (25 or fewer employees) | \$14.00 | Michigan (2+ employees) | \$9.87 | Oregon | \$13.50 |
| Colorado - Daily overtime threshold is 12 hours | \$12.56 | Minnesota | | Pennsylvania | \$7.25 |
| Connecticut (Effective 7/1/22) | \$14.00 | -Large employer (annual receipts > \$500,000) | \$10.33 | Puerto Rico | |
| Delaware | \$10.50 | -Small employer (annual receipts < than \$500,000) | \$8.42 | -Employers not covered by the FLSA | \$5.08 |
| District of Columbia (Effective 7/1/22) | \$16.10 | -Weekly overtime threshold is 48 hours | | -Employers covered by the FLSA (Effective 1/1/22) | \$8.50 |
| Florida (Effective 9/30/22) | \$11.00 | Mississippi | \$7.25 | Rhode Island | \$12.25 |
| Georgia (6+ employees) | \$5.15 | Missouri | \$11.15 | South Carolina | \$7.25 |
| -Employers covered by FLSA | \$7.25 | Montana | | South Dakota | \$9.95 |
| Hawaii (Effective 10/1/22) | | -Large employer (annual receipts > \$110,000) | \$9.20 | Tennessee | \$7.25 |
| -An employee earning a guaranteed monthly compensation of \$2,000 or more is exempt from the State minimum wage and overtime law. | \$12.00 | -Small employer (annual receipts < than \$110,000) | \$4.00 | Texas | \$7.25 |
| Idaho | \$7.25 | Nebraska (4+ employees) | \$9.00 | Utah | \$7.25 |
| Illinois (4+ employees) | \$12.00 | Nevada | | Vermont (2+ employees) | \$12.55 |
| Indiana (2+ employees) | \$7.25 | -w/ no health insurance | \$10.50 | Virginia (4+ employees) | \$11.00 |
| Iowa | \$7.25 | -w/ health insurance | \$9.50 | Washington | \$14.49 |
| Kansas | | New Hampshire | \$7.25 | West Virginia (6+ employees) | \$8.75 |
| -Weekly overtime threshold is 46 hours | \$7.25 | New Jersey | \$13.00 | Wisconsin | \$7.25 |
| Kentucky | | New Mexico | \$11.50 | Wyoming | \$5.15 |
| -Premium pay required for 7th day when employee works a 7-day week | \$7.25 | New York | \$13.20 | | |
| | | North Carolina | \$7.25 | | |
| | | North Dakota | \$7.25 | | |

CONTINUED >>>