



# FAIR LABOR STANDARDS ACT



UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION

[dol.gov/whd](https://dol.gov/whd)  
1-866-487-9243

# 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

# 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

# Major Provisions



Coverage



Youth  
Employment



Minimum Wage



Recordkeeping

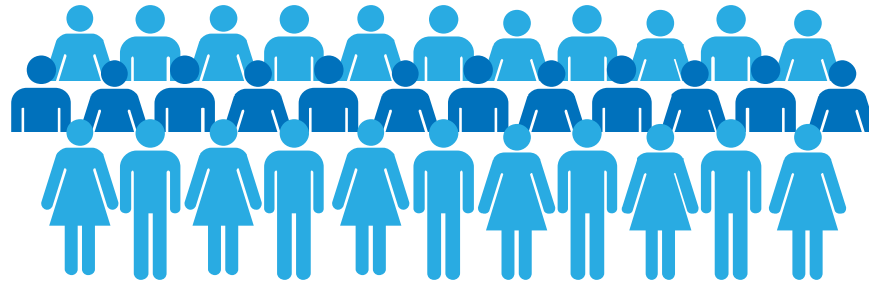


Overtime

# Employment Relationship

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

# 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

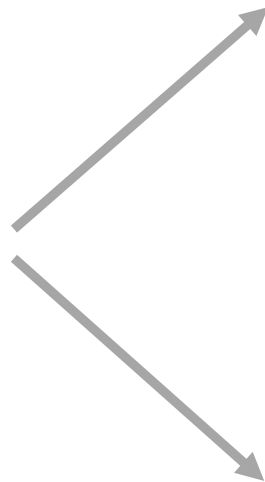


**FACT SHEET:**  
FLSA Coverage

# 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



# Enterprise Coverage

## Enterprise Coverage in Non-Profit Organizations

- A non-profit's charitable activities are not ordinary commercial activities and are not covered under the FLSA
- A non-profit's activities performed for a business purpose, however, are covered if the ADV is met
- The "ADV" threshold:
  - Includes only activities performed for a **business purpose**
  - Does not include income—from donations, membership fees, etc.—used for **charitable activities**

# Enterprise Coverage

A business or a non-profit organization may also be covered by the FLSA as a “named enterprise.”

## **Named enterprises:**

- Include hospitals, residential medical or nursing care facilities, schools, preschools, and government agencies
- Are covered regardless of their ADVs
- Must afford minimum wage and overtime protections to all employees, unless exempt

# 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

# 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

# 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)**

The following five requirements must be met:

- (1) the lodging is regularly provided by the employer or similar employers;
- (2) the employee voluntarily accepts the lodging;
- (3) the lodging is furnished in compliance with applicable federal, state, or local law;
- (4) the lodging is provided primarily for the benefit of the employee rather than the employer; and
- (5) the employer maintains accurate records of the costs incurred in furnishing the lodging.

# Minimum Wage

**Deductions** from pay are illegal if:

- Items 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

## 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.

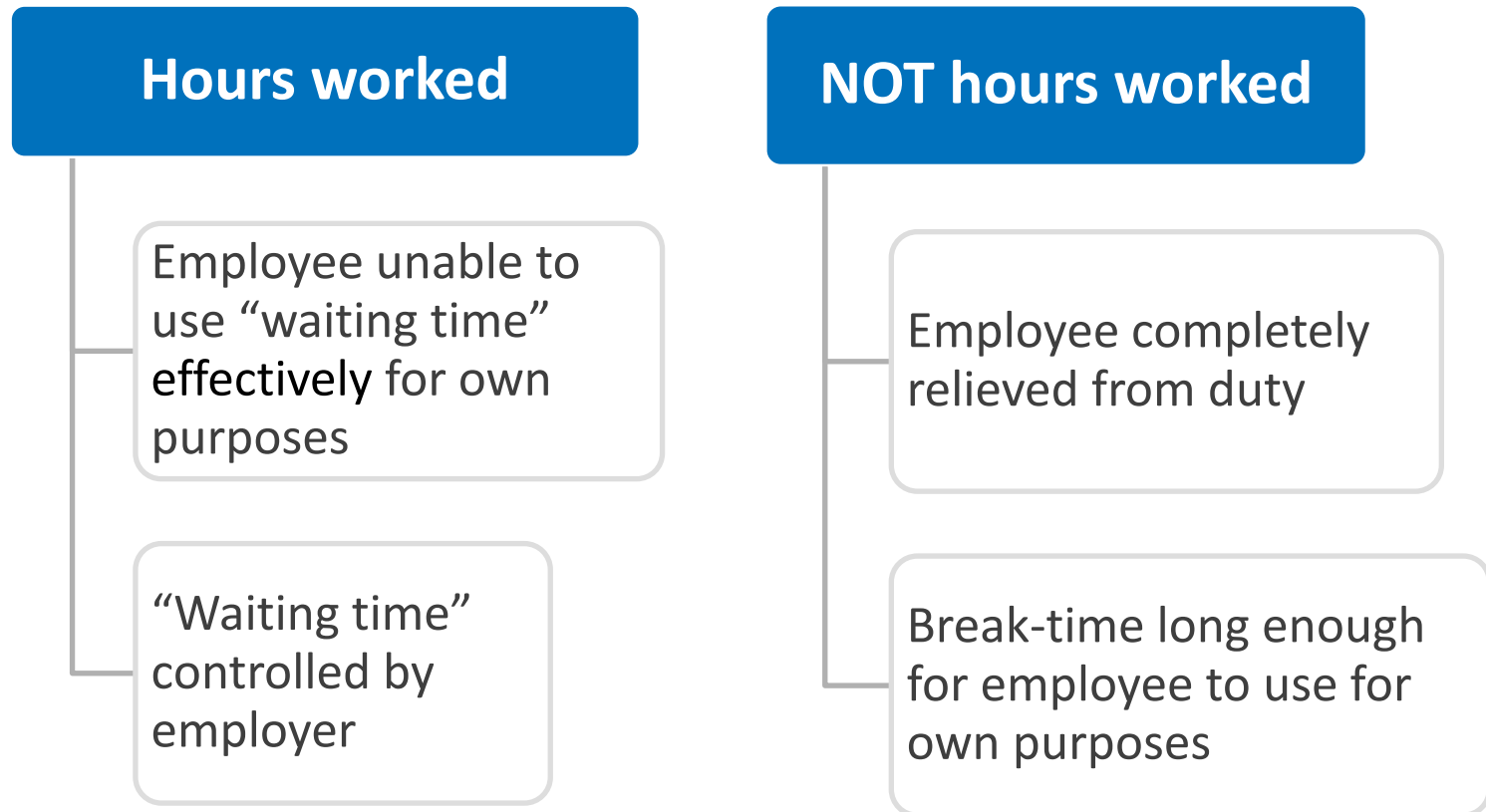
Work not requested but “suffered or permitted” is work time.



**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

# Minimum Wage

## Shifts of 24 Hours or More

For workers who do not permanently or for extended periods of time reside on the employer's premises, the employer and employee can exclude from hours worked up to 8 hours spent sleeping if:

- The employer furnishes adequate sleeping facilities; and
- The employee can usually enjoy 5 consecutive hours of uninterrupted sleep; and
- The employer and employee have an express or implied agreement to exclude sleep time



# Minimum Wage

## Hours Worked Summary and 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:*** deduct for sleep in less than 24-hour shift

# Minimum Wage

## Minimum Wage Summary and Common Violations

- ***Compensation Included:*** Required minimum wage in cash and/or allowable equivalent
- ***Deductions:*** Illegal deductions, minimum wage not paid
- ***Tipped Employees:*** Tips not retained by employees, cash wage not paid
- ***Hours Worked:*** Work suffered or permitted not recorded, or paid

# 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

## Regular Rate

- Determined by dividing total earnings in workweek (except for statutory exclusions) by total number of hours worked in workweek

**Total Compensation (except for statutory exclusions)**

÷

**Total Hours Worked = RR**

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

# Overtime

## Regular Rate and Premium Pay for OT Hours

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

**Total Compensation (except for statutory exclusions)**

÷

**Total Hours Worked = RR**

**STEP 2:** **RR** x .5 = Half-time Premium Pay per OT Hour

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

# Overtime

The most common FLSA minimum wage and overtime exemption -- often called the “EAP” or “white-collar” exemption -- applies to certain:

Executive Employees

Administrative Employees

Professional Employees

# 541 Exemptions

Salary Basis

Salary Level

Job Duties



# 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
- **State Law:** Confusion between state and federal law

# 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.

Download the poster electronically at :  
<https://www.dol.gov/agencies/whd/posters/flsa>

To request by phone call:

**1-866-487-9243**

# 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

Opinion Letters

Visit the WHD home page: [www.dol.gov/agencies/whd](http://www.dol.gov/agencies/whd)



# FLSA Compliance Assistance

- Call WHD toll free and confidential 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

# Wage and Hour Division

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