

FLSA Facts

What Does the Fair Labor Standards Act Require? Who is Exempt from Overtime?

The following general guidelines provide an overview of both the requirements of the FLSA and the exemptions from its overtime provisions.

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping and child labor standards affecting workers in the private sector and in federal, state and local governments. Individual states can impose more stringent requirements, and employers must consider state law in conjunction with the FLSA. Where federal and state law differ, employers must follow the rule that provides the greater benefit to the employee.

Basic Wage Standards

Covered non-exempt workers are entitled to a minimum wage of not less than \$7.25 an hour. State minimum wage laws may differ. Overtime pay at a rate of not less than one and one-half times the regular rate of pay is required after 40 hours of work in a workweek.

All wages are due to be paid on the regular payday for the pay period covered. Only certain deductions from wages may be made, and those deductions are set out in detail in the FLSA. Deductions from wages for such items as cash or merchandise shortages, employer-required uniforms and tools of the trade are not legal to the extent that they reduce the wages of employees below the minimum rate required by the FLSA or reduce the amount of overtime pay due under the FLSA. These and certain other deductions also may be prohibited under state laws.

While the FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices that the FLSA does not regulate. For example, the FLSA does not require:

1. Vacation, holiday, severance or sick pay;
2. Meal or rest periods, holidays off or vacations;
3. Premium pay for weekend or holiday work;
4. Pay raises or fringe benefits; and
5. A discharge notice, reason for discharge or immediate payment of final wages to terminated employees.

Also, the FLSA does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old.

Exemptions

Some employees are exempt from the overtime pay provisions or both the minimum wage and overtime pay provisions.

Because exemptions are generally narrowly defined under the FLSA, an employer should carefully check the exact terms and conditions for each exemption to see if it applies. See the reverse side of this



page for the salary and duty requirements of certain exemptions under the FLSA.

Other exemptions may apply in specific industries. State law may apply different tests for the exemptions, and employees must meet the tests under both federal and state law to be exempt.

Recordkeeping

The FLSA requires employers to keep records on wages, hours and other items, as specified in the U.S. Department of Labor's recordkeeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following records must be kept:

1. Personal information, including employee's name, home address, occupation, sex and birth date if under 19 years of age;
2. Hour and day when workweek begins;
3. Total hours worked each workday and each workweek;
4. Total daily or weekly straight-time earnings;
5. Regular hourly pay rate for any week when overtime is worked;
6. Total overtime paid for the workweek;
7. Deductions from or additions to wages;
8. Total wages paid each pay period; and
9. Date of payment and pay period covered.

WAGE AND HOUR EXEMPTIONS UNDER THE FAIR LABOR STANDARDS ACT

Executive 29 C.F.R. § 541.100, *et seq.*

- Compensation on a salary basis of no less than \$913/week exclusive of board, lodging or other facilities;
- Primary duty is the management of the enterprise in which the employee is employed, or a recognized department or subdivision thereof;
- Customarily and regularly directs the work of two (2) or more other employees; and
- Has the authority to hire or fire other employees (or make such recommendations regarding hiring, firing, advancement, promotion or other change of status that are given particular weight).

General Administrative Exemption

- Compensation on a salary basis of no less than \$913/week exclusive of board, lodging or other facilities;
- Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or its customers as distinguished from work on production line or retail sales; and
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Inside Sales Exemption (Section 7(i))

An employer can only use the inside sales overtime exemption for a commissioned employee if three conditions are met:

1. The employee must be employed by a retail or service establishment;
2. The employee's regular rate of pay must exceed one and one-half times the applicable minimum wage for every hour worked in a workweek; and
3. More than half the employee's total earnings in a representative period must consist of commissions on goods or services.

For purposes of the inside sales exemption, a business is considered a retail or service establishment when:

1. Seventy-five percent (75%) of the annual dollar volume of the sales of goods or services (or of both) come from sales that are not resale; and
2. The sales of goods or services (or of both) are recognized as retail sales in the particular industry.

Learned Professional

- Compensation on a salary basis of no less than \$913/week exclusive of board, lodging or other facilities;
- Primary duty is the performance of work requiring an advanced knowledge (work that is predominantly intellectual in character and that includes work requiring the consistent exercise of discretion and judgment, as distinguished from the performance of routine, mental, manual, mechanical or physical work);
- 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.

Creative Professional

- Compensation on a salary basis of no less than \$913/week exclusive of board, lodging or other facilities; and
- Primary duty is the performance of work requiring invention, imagination, originality or other talent in a recognized field of artistic or creative endeavor such as music, writing, acting and graphic arts, as distinguished from routine, manual, mechanical or physical work.

Computer Professional 29 C.F.R. § 541.400, *et seq.*

- Compensation either on a salary or fee basis at a rate no less than \$913/week or, if compensated on an hourly basis, at a rate no less than \$27.63/hour;
- Employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in a computer field; and
- 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 and system design specification;
 3. The design, documentation, testing, creation or modification of computer programs related to machine operating system; or
 4. A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales 29 C.F.R. § 541.500, *et seq.*

- Primary duty is making sales (defined as the sale, exchange, contract to sell, consignment for sale, shipment for sale or other disposition), obtaining orders or contracting for services or for the use of facilities for which consideration will be paid by client or customer; and
 - Customarily and regularly engaged away from the employer's place or places of business.
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