



Enterprise Coverage

A business may operate a covered enterprise under the FLSA if:

- It engages in ordinary commercial activities performed for a business purpose—that result in sales made or business done of no less than \$500,000 (the Annual Dollar Volume or "ADV" threshold).
- It has two or more employees engaged in commerce or in the production of goods for commerce.

Note: §3(s)(1)(A) - Enterprise Coverage



Enterprise Coverage

A business may also be a "named enterprise."

- Named enterprises include hospitals, organizations providing medical or nursing care for residents, schools, preschools, and government agencies (federal, state, and local).
- Named enterprises are covered <u>regardless of their ADV</u>.
- Every employee of a named enterprise is entitled to minimum wage and overtime protections, unless the employee is exempt.



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Individual Coverage

Employees of businesses who are not covered on an enterprise basis may still be covered individually.

- The employee's (not the establishment's) activities, determine coverage.
- Individual coverage applies on a workweek basis.

Note: 29 C.F.R. §776.0 – Individual Coverage





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Individual Coverage

Includes workers who are engaged in:

- Interstate commerce or the production of goods for interstate commerce
- Domestic service—including home care.

Note: 29 C.F.R. §776.11 – Individual Coverage





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Individual Coverage

- Interstate commerce includes:
 - making out-of-state phone calls;
 - receiving/sending interstate mail or electronic communications;
 - ordering or receiving goods from an out-ofstate supplier;
 - handling credit card transactions or performing the accounting or bookkeeping for such activities.



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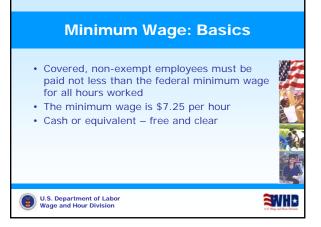
The Bottom Line

- Almost every employee in the United States is covered by the FLSA
- Examples of employees who may not be covered
 - Employees working for small construction companies
 - Employees working for small independently owned retail or service businesses



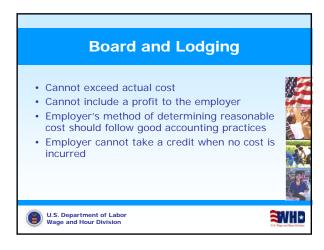


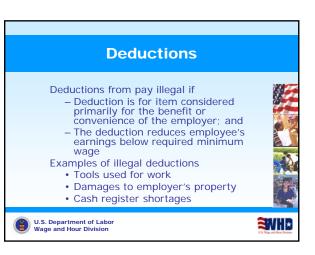


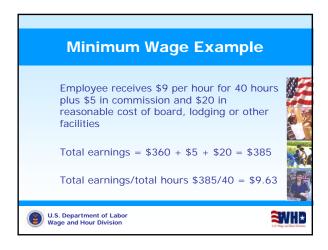


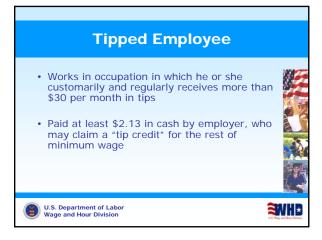


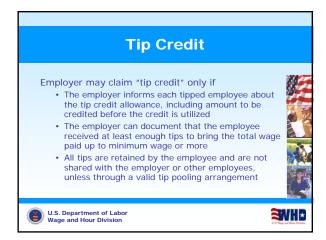


















Waiting Time

Counted as hours worked when

- Employee is unable to use the time effectively for his or her own purposes; and
- · Time is controlled by the employer

Not counted as hours worked when

- · Employee is completely relieved from duty; and
- Time is long enough to enable the employee to use it effectively for his or her own purposes





On-Call Time

On-call time is hours worked when

- Employee has to stay on the employer's premises
- Employee has to stay so close to the employer's premises that the employee cannot use that time effectively for his or her own purposes

On-call time is not hours worked when

- · Employee is required to carry a pager
- Employee is required to leave word at home or with the employer where he or she can be reached



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Meal and Rest Periods

Meal periods are not hours worked when the employee is relieved of duties for the purpose of eating a meal

Rest periods of short duration (normally 5 to 20 minutes) are counted as hours worked and must be paid





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Training Time

Time employees spend in meetings, lectures, or training is considered hours worked and must be paid, unless

- Attendance is outside regular working hours
- · Attendance is voluntary
- The course, lecture, or meeting is not job related
- The employee does not perform any productive work during attendance



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Travel Time

- · Ordinary home to work travel is not work time
- Travel between job sites during the normal work day is work time
- Special rules apply to travel away from the employee's home community



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Sleep Time

Less than 24 hour duty

 Employee who is on duty for less than 24 hours is considered to be working even if allowed to sleep or engage in other personal pursuits

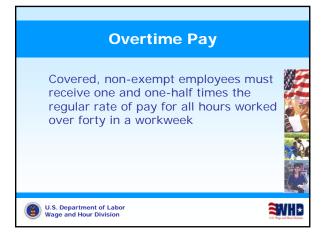


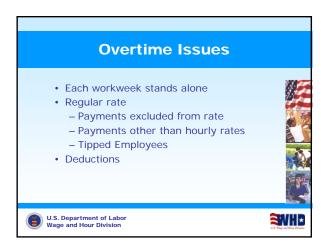
 Parties can agree to exclude bona fide sleep and meal periods



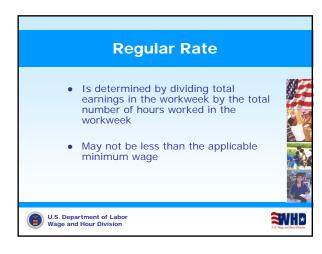




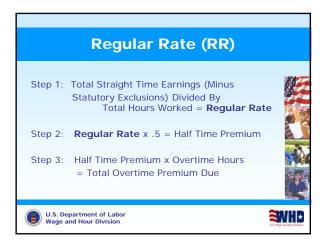


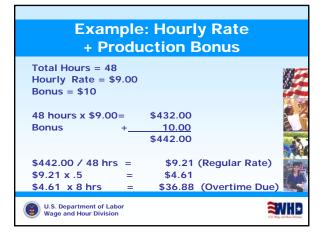


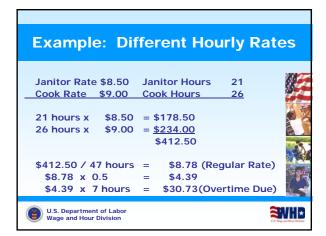


















Example: Fixed Salary for Fluctuating Hours

Fixed Salary \$420.00 (for all hours worked)

Week 2 Hours Worked 41

Regular Rate \$10.24 (\$420 / 41 hours)

Additional Half-Time Rate \$5.12

Salary Equals = \$420.00 1 hour x \$5.12 = \$5.12 Total Due = \$425.12





Example: Tipped Employee

Rate Employer Pays \$2.13 Tip Credit Claimed \$5.12 Regular Rate \$7.25 Additional Half-Time Rate \$3.63

50 Hours X \$7.25 = \$362.50 10 hours X \$3.63 = \$36.30

Total Due = \$398.80 (less tip credit)

Tip Credit 50 x \$5.12 = \$256.00 Total Cash Wage Due = \$142.80



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Deductions in Overtime Workweeks





Deductions for Board, Lodging and Facilities

- No limit on the amount deducted for the reasonable cost of board, lodging, or other facilities
- Items that are primarily for the benefit or convenience of the employer do not qualify as facilities
- Regular rate is calculated before deduction is taken



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Deductions for Items Other Than Board, Lodging, and Facilities

A deduction may be made if

- The deduction is bona fide, and
- It is made for particular items under a prior agreement, and
- The purpose is not to evade statutory overtime requirements or other laws, and
- It is limited to the amount above the highest applicable minimum wage for the first 40 hours





Exemptions and Exceptions

There are numerous exemptions and exceptions from the minimum wage and/or overtime standards of the FLSA

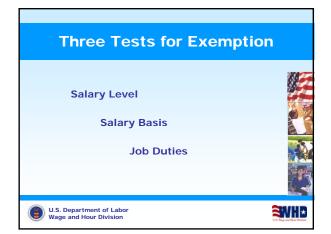


















Minimum Salary Level: \$913

- · For most employees, the minimum salary level required for exemption is \$913 per week
- · Must be paid "free and clear"
- The \$913 per week may be paid in equivalent amounts for periods longer than one week

- Biweekly: \$1,826 - Semimonthly: \$1,978.16 - Monthly: \$3,956.33



Nondiscretionary Bonuses

- Nondiscretionary bonuses and incentive payments (including commissions) are forms of compensation promised in advance to employees (e.g., bonuses for meeting set production goals, retention bonuses, and commission payments based on a fixed formula).
- May be used to satisfy up to 10% of the standard salary level.
 - Minimum of 90% (approx. \$822) of standard salary level must be paid as a weekly salary.
- Payments must be paid on a quarterly or more frequent basis.



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Catch-up Payments

- · If an employee does not earn enough from the nondiscretionary bonus, commission, or incentive payments in a given quarter to meet the standard salary level - an employer may make a "catch-up" payment within one pay period of the end of the quarter.
- Any such "catch-up" payment will count only toward the prior quarter's salary amount and not toward the salary amount in the quarter in which it is paid.





Highly Compensated Employees (HCE)

- HCEs must continue to receive at least the full standard salary level amount (\$913 per week) each pay period on a salary or fee basis without regard to the payment of nondiscretionary bonuses and incentive payments. (No Change to this principle)
- Nondiscretionary bonuses and incentive payments (including commissions) may be counted towards the highly compensated employees' total annual compensation requirement (\$134,004). (No Change to this principle)
- The HCE test <u>does not</u> allow employers to credit nondiscretionary bonuses or incentive payments (including commissions) towards the standard salary level weekly requirement



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Automatic Updates

- · Every three years beginning January 1, 2020, the standard salary and annual compensation levels will be automatically updated.
- · At least 150 days before the effective date, the Secretary will publish a notice in the Federal Register of the updated salary and total annual compensation amounts that will be required.





Updating the Standard Salary Level

Standard salary level – updated to equal the 40th percentile of weekly earnings of full-time salaried workers in the lowestwage Census Region.







Updating HCE Compensation Level

Highly compensated employees – updated to equal the 90th percentile of annualized earnings of full-time salaried workers nationally.





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Salary Basis Test

- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- · Need not be paid for any workweek when no work is performed



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Deductions From Salary

- · An employee is not paid on a salary basis if deductions from the predetermined salary are made for absences occasioned by the employer or by the operating requirements of the businesses
- If the employee is ready, willing and able to work, deductions may not be made for time when work in not available



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Permitted Salary Deductions

Seven exceptions from the "no pay-docking" rule

- 1. Absence from work for one or more full days for personal reasons, other than sickness or disability
- 2. Absence from work for one or more full days due to sickness or disability if deductions made under a bona fide plan, policy, or practice of providing wage replacement benefits for these types of absences
- To offset any amounts received as payment for jury fees, witness fees, or military pay



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Permitted Salary Deductions (continued)

Seven exceptions from the "no pay-docking" rule (cont.)

- 4. Penalties imposed in good faith for violating safety rules of "major significance"
- Unpaid disciplinary suspension of one or more full days imposed in good faith for violations of written workplace conduct rules
- 6. Proportionate part of an employee's full salary may be paid for time actually worked in the first and last weeks of employment
- 7. Unpaid leave taken pursuant to the Family and Medical Leave Act



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Effect of Improper Deductions

- An actual practice of making improper deductions from salary will result in the loss of the exemption
 - During the time period in which improper deductions were made
 - For employees in the same job classifications
 - Working for the same managers responsible for the actual improper deductions
- Isolated or inadvertent improper deductions, however, will not result in the loss of exempt status if the employer reimburses the employee





Safe Harbor

- · The exemption will not be lost if the employer:
 - Has a **clearly communicated** policy prohibiting improper deductions and including a complaint mechanism
 - · Reimburses employees for any improper deductions: and
 - · Makes a good faith commitment to comply in the future
- Unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints





Executive Duties

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



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20% Owner Executives

- · The executive exemption also includes employees who
 - own at least a bona fide 20-percent equity interest in the enterprise
 - are actively engaged in management of the
- The salary level and salary basis requirements do not apply to exempt 20% equity owners



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Administrative Duties

- · Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers
- · Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance





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Management or General Business Operations

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



Insurance Claims Adjusters

- · Exempt status depends on actual job duties
- May be exempt if duties include
 - Interviewing insured, witnesses, and physicians;
 - Inspecting property damage
 - Reviewing factual information to prepare damage estimates
 - Evaluating and making recommendations regarding coverage of claims
 - Determining liability and total value of a claim;
 - Negotiating settlements
 - Making recommendations regarding litigation







Financial Services

- May be exempt if duties include
 - Collecting and analyzing information regarding the customer's income, assets, investments or debts
 - Determining which financial products best meet the customer's needs and financial circumstances
 - Advising the customer regarding the advantages and disadvantages of different financial products
 - Marketing, servicing, or promoting the employer's financial products
- An employee whose primary duty is selling financial products does not qualify for the administrative exemption



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Professional Duties

- · Primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual
- · Primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor



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Field of Science or Learning

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

Law Theology Medicine Pharmacy

Accounting Teaching

Actuarial Computation Physical Sciences

Architecture Chemical Sciences Engineering **Biological Sciences**



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Exempt Medical Professions

- Doctors
- · Registered Nurses
- · Registered or certified medical technologists
 - 3 years of pre-professional study in an accredited college or university, plus 1 year of professional study in an accredited school of medical technology
- · Dental hygienists
 - 4 years of pre-professional and professional study in an accredited college or university
- Certified physician assistants
 - 4 years of pre-professional and professional study, including graduation from an accredited physicia assistant program



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Other Commonly Exempt Professions

- Lawyers
- Teachers
- Accountants
- Pharmacists
- Engineers
- Actuaries · Chefs
- · Certified athletic trainers
- · Licensed funeral directors or embalmers



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Additional Nonexempt Professions

- · Licensed practical nurses
- Accounting clerks and bookkeepers who normally perform a great deal of routine work
- · Cooks who perform predominantly routine mental, manual, mechanical or physical work
- Paralegals and legal assistants
- · Engineering technicians







Recognized Field of Artistic or **Creative Endeavor** Music

- - Musicians, composers, conductors, soloists
- Writing
 - Essayists, novelists, short-story writers, play writers
 - Screen play writers who choose their own subjects
 - Responsible writing positions in advertising agencies
- · Acting
- - Painters, photographers, cartoonists



Computer Related Occupations Primary duty is: · The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications

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;

The design, documentation, testing, creation, or modification of computer programs related to machine operating systems

· A combination of the above requiring the same level of skills, and



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Computer Related Occupations

The employee must also receive either

- A guaranteed salary or fee of \$913 per week or more, or
- An hourly rate of not less than \$27.63 per hour







Outside Sales

- · Primary duty is
- Making sales or
- Obtaining orders or contracts for services or facilities for consideration paid by customer and
- Customarily and regularly engaged away from the employer's place(s) of business in performing such primary duty
- · No compensation test



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Exception for Retail Commissioned Sales Employees





Overtime Exception for Retail Commissioned Sales Employees

Employees of a retail or service establishment who are paid more than half their total earnings on a commission basis may be exempt from the overtime pay requirements of the FLSA







Requirements for Exception

- The employee must be employed by a retail or service establishment
- More than half the employee's total earnings in a representative period must represent commissions on goods or services
- Employee's total compensation divided by number of hours worked or regular rate must exceed one and one-half times the minimum



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Requirements for Exception

Unless all three conditions are met, the exception does not apply, and overtime premium pay must be paid for all hours worked over forty in a workweek at one and one-half times the regular rate of pay





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Retail Establishment

Retail and service establishments are defined as establishments 75% of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry





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Representative Period

- · May be as short as one month, but must not be greater than one year
- Employer must select a representative period in order to determine if this condition has been





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More than One and One-Half Times the Minimum Wage

To determine if the regular rate exceeds one and one-half times the minimum wage, divide the employee's total earnings for the pay period by the employee's total hours worked during the pay period





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Youth Employment











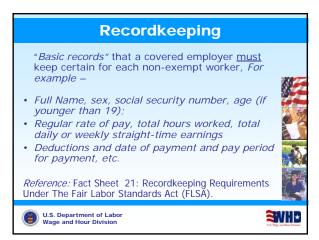






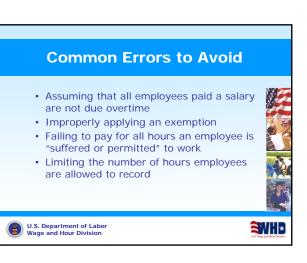












Common Errors to Avoid

- Failing to include all pay required to be included in calculating the regular rate for overtime
- Failing to add all hours worked in separate establishments for the same employer when calculating overtime due







Common Errors to Avoid

- Making improper deductions from wages that cut into the required minimum wage or overtime. Examples: shortages, drive-offs, damage, tools, and uniforms
- Treating an employee as an independent contractor
- Confusing Federal law and State law







The FLSA Does Not Require

- · Vacation, holiday, severance, or sick pay
- · Meal or rest periods, holidays off, or vacations
- Premium pay for weekend or holiday work
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees
- Any limit on the number of hours in a day or days in a week an employee at least 16 years old may be required or scheduled to work
- · Pay raises or fringe benefits



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Enforcement

- FLSA enforcement is carried out by Wage and Hour staff throughout the U.S
- Where violations are found, Wage and Hour advises employers of the steps needed to correct violations, secures agreement to comply in the future and supervises voluntary payment of back wages as applicable
- A 2-year statute of limitations generally applies to the recovery of back pay. In the case of a willful violation, a 3-year statute of limitations may apply



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Enforcement

In the event there is not a voluntary agreement to comply and/or pay back wages, the Wage and Hour Division may:

- Bring suit to obtain an injunction to restrain the employer from violating the FLSA, including the withholding of proper minimum wage and overtime
- Bring suit for back wages and an equal amount as liquidated damages



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Employee Private Rights

An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs







Penalties

- Employers who willfully violate the Act may be prosecuted criminally and fined up to \$11,000
- Employers who violate the youth employment provisions are subject to a civil money penalty of up to \$11,000 for each employee who was the subject of a violation
- Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to \$1,100 for each such violation



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Compliance Assistance Materials - FLSA

- The Law
- The Regulations (29 C.F.R. Part 500-899)
- Interpretive Guidance (opinion letters, field operations handbook, and field bulletins)
- · FLSA Poster
- · Handy Reference Guide
- · Information for New Businesses



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Additional Information

Other resources include:

- New Overtime Rule
- Guidance Documents
- Fact Sheets
- Frequently Asked Questions





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Additional Information

- o Visit the WHD homepage at:
 - http://www.dol.gov/whd/overtime/final2016
 - www.wagehour.dol.gov
- · Call the WHD toll-free information and helpline at
 - 1-866-4US-WAGE (1-866-487-9243)
 - Call or visit the nearest Wage and Hour Division
 Office
- Use the DOL interactive advisor system ELAWS (Employment Laws Assistance for Workers and Small Businesses) at: www.dol.gov/elaws



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