

Chapter 17

Fair Labor Standards Act

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Statutory Basis

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: . . . not less than \$5.15 an hour beginning September 1, 1997. Sec. 6(a),

Fair Labor Standards Act of 1938, as amended, 29 USC 201, et seq.

. . . No employer shall employ any of his employees for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed. Sec. 7(a)(1), Fair Labor Standards Act of 1938, as amended, 29 USC 201, et seq.

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Show me the Money!

- Fair Labor Standards Act (FLSA)
 - Law to regulate pay and hours worked passed in 1938
 - Set standards for minimum wage
 - Prohibits pay differentials based solely on gender
- Class action lawsuits seeking overtime pay
- Major regulatory revision effective August of 2004

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General Provisions

- FLSA is administered by the U.S. Department of Labor's Wage and Hour Division
 - States also have wage and hour provisions administered by comparable state agencies
- Regulates child labor, wages and hours
- Requires records on wages and hours
- Violations

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Covered Employees

- Two types of coverage in FLSA:
 - Individual coverage
 - Enterprise coverage
- The law applies to both part-time and full-time employees
- Federal, state and local employees are covered
- The law also covers domestic service workers
- There are exemptions

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Minimum Wages

- The minimum wage law was established after WWII in hopes that it would avoid another depression
- Under FLSA, employers are required to pay covered employees a certain minimum hourly wage
- State wage laws may have higher minimums than the federal law
- Time and a half pay
- Subminimum wage employees
- Tipped employees

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Minimum Wages (continued)

- Not everyone is covered under the statute
- Primary exemptions
- Rule change from August 2004
 - Prior to the rule change, salary levels used in the wage and hour rules had not been updated for nearly 30 years
 - Employees earning up to \$23,660 per year (\$455/week) are automatically entitled to overtime pay

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Minimum Wages (continued)

- Executive employees are exempt if they:
 - Manage two or more employees
 - Have firing, hiring and promotion authority
- Employees who earn at least \$100,000 per year and perform some executive, professional, or administrative job duties are automatically exempt from overtime provisions
- “Safe harbor” provision
- Back wages
- Retaliation against employees

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Exemptions from Both Minimum Wage and Overtime Pay

- Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations (as defined in Department of Labor regulations).
- Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery.
- Farm workers employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding calendar year.
- Casual babysitters and persons employed as companions to the elderly or infirm.

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Maximum Hours

- FLSA does not **limit the hours** employees work, but, rather, **sets standards** for the hours constituting a normal workweek for wage purposes
 - Sets wage rates for hours worked over and above the normal week
- Comp time

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Exemptions from Overtime Pay Only

- Certain commissioned employees of retail or service establishments; auto, truck, trailer, farm implement, boat, or aircraft salesworkers; or parts-clerks and mechanics servicing autos, trucks, or farm implements who are employed by nonmanufacturing establishments primarily engaged in selling these items to ultimate purchasers.
- Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans.
- Announcers, news editors, and chief engineers of certain nonmetropolitan broadcasting stations.
- Domestic service workers living in the employer's residence; Employees of motion picture theaters.
- Farmworkers.

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Partial Exemptions from Overtime Pay

- Partial overtime pay exemptions apply to employees engaged in certain operations on **agricultural commodities** and to employees of certain **bulk petroleum distributors**.
- **Hospitals and residential care** establishments may adopt, by agreement with their employees, a 14-day work period instead of the usual 7-day workweek, if the employees are paid at least time and one-half their regular rates for hours worked over 8 in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours.
- Employees who **lack a high school diploma**, or who have not attained the educational level of the 8th grade, can be required to spend up to 10 hours in a workweek engaged in remedial reading or training in other basic skills without receiving time and one-half overtime pay for these hours. However, the employees must receive their normal wages for hours spent in such training and the training must not be job specific.

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Child Labor Laws

- FLSA sets minimum age standards for allowing children to work
 - Most cannot work before age 16
 - Age 18 the minimum for hazardous jobs
 - Certain jobs allowed for children 14-16 that do not interfere with their health, education, or well-being
- State child labor laws override federal law

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Management Tips

- Whenever an employee is not an adult, check to make sure the employee is working only in ways authorized by law and hours dictated by law. Do not make exceptions.
- The purpose of time-and-a-half pay is to encourage employers to bring on extra employees when needed, rather than using present employees to take on extra duties or work extra hours.
- Be familiar with the employees exempted from wage and hour requirements so that wages are not paid out unnecessarily.
- Conduct periodic audits of the workplace to make sure employees are working as efficiently as possible so that overtime is limited only to what is necessary.
- Use the resources of the wage and hour offices if you run into a situation that seems unclear.

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Summary

- FLSA is a comprehensive piece of legislation that governs wages, hours, and the employment of minors in the workplace and requires equal pay for both genders.
- While its coverage is far-reaching, it does provide exemptions.
- Employers are required to pay covered employees at least the minimum wage.
- Covered employees must be compensated at a rate of time and one-half their normal rate of pay for hours worked over 40 in one week.

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Summary (continued)

- Children are prohibited from working if they are below a certain age, with exceptions.
- Be familiar with both the provisions of coverage and the exemptions, because violations may result in civil and criminal liability.
- Under the new regulations, in general, employees, making under \$23,660 are automatically considered to qualify for overtime pay, and those over \$100,000 are automatically considered exempt from overtime pay.
