

An Easy-to-Follow GUIDE TO THE FAIR LABOR STANDARDS ACT

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Guide to The Fair Labor Standards Act

There is a lot of confusion surrounding federal labor laws, which protect workers' rights in a variety of ways. One such law, the Fair Labor Standards Act, is a crucial piece of legislation that every employee should know about. The minimum wage and overtime protections it gives workers are among the important parts of this complex and often misunderstood law — and it's crucial for workers to have a clear idea of what their protections are so they are paid for all the work they do.

We've compiled a thorough and easy to read guide that may clarify some of the questions you may have regarding the FLSA, which covers not only employees but also their bosses and employers.





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This guide explains both general and specific information related to the FLSA, as well as actions workers can take to protect their legal interests.



What is the Fair Labor Standards Act?

Established in 1938, the Fair Labor Standards Act is a federal law that established minimum wage, overtime pay eligibility, the idea of “time and a half” as the typical overtime rate, record keeping, and child labor standards that affect both full and part-time workers in the private sector, federal, state, and local governments. The law was first introduced as part of President Franklin Delano Roosevelt’s New Deal to address often terrible working conditions.

Roosevelt’s New Deal was met with strong opposition from the U.S. Supreme Court for years, especially those sections that would effectuate changes for workers’ treatment. The Supreme Court had struck down laws establishing minimum wage, hours worked, and child labor provisions as early as 1918. Many constituents feared that establishing a minimum wage would put them out of business.

When it was finally signed into law, 700,000 workers were affected by the wage increase and 13 million were affected by the hours provision. This would be a drastic overhaul to the millions of workers, children especially, who were exposed to horrid working conditions, and would ignite labor reform movements. This piece of legislation has been amended over 40 times since its introduction, with alterations and amendments providing and clarifying benefits to workers in various employment sectors as issues arise.

What does it do for me?

One major goal of the FLSA is to protect minimum wage and overtime rights for workers across various sectors. It establishes a minimum wage that must be adhered to across most work environments, with overtime pay for workers exceeding hours during the workweek. It also protects employees from violations against overtime and wage payments.



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What doesn't it do for me?

While the FLSA sets minimum wage and overtime pay standards, it does not guarantee that companies will provide or pay for:

- (1) Vacation, holiday, sick pay or severance
- (2) Meal, or rest periods, holidays off, or vacations
- (3) Premium pay for holiday or weekend work
- (4) Pay raises and fringe benefits
- (5) A discharge notice, reasons for layoff, or immediate payment of final wages to dismissed employees

Also, any agreements between an employer and employee that minimum wage and overtime will not be paid is unenforceable.

How does it differ from local laws?

The FLSA only establishes the general and basic federal labor standards, but states have the power to enforce their own labor laws. For example, states are allowed to require a higher minimum wage than that required by the FLSA. Local governments may also require different kinds of paid leave. For example, New York requires employers with five or more employees who are employed for hire more than 80 hours a year to provide paid sick leave, while employers with fewer than five employees must provide unpaid sick leave.

Who enforces the FLSA?

The U.S. Department of Labor's Wage and Hour Division administers and enforces the FLSA with respect to private employment, state and local government employment, and federal employees.

The Wage and Hour Division consists of 200 offices throughout the country with trained investigators allowed to conduct investigations to determine whether the laws apply to an employer. WHD will verify that workers are paid and employed properly and that youths under 18 are employed under the child labor provisions. Investigators have the right to initiate unannounced investigations in order to directly observe normal business operations but can advise an employer prior to opening the investigation.

The FLSA defines "work" with the words "suffer or permit to work." Suffer or permit to work means that should an employer require or allow employees to work, they are therefore employed and the time spent is likely hours worked.



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What is minimum wage?

The minimum wage is the lowest wage permitted by law or by a special agreement (i.e. labor union). The FLSA establishes this wage floor, which Congress has occasionally voted to increase over time. Many states also have their own minimum wage laws. If an employee is subject to both federal and state minimum wage laws, the employee is entitled to the higher of the two.

Is everyone eligible for minimum wage?

No, minimum wage does not apply to everyone. Domestic workers who provide companionship services to the elderly or medical care to the disabled, casual babysitters, fulltime students, youths under age 20 during their first 90 consecutive calendar days of employment, students, outside salespeople, workers of seasonal amusement/recreational businesses such as ski resorts or county fairs, independent contractors, volunteers, trainees, interns and temporary employees are exempt.

What is overtime?

Overtime pay is described as additional financial compensation for any hours worked by an employee exceeding 40 hours per week. U.S.-based businesses currently owe eligible staff overtime pay at a rate of 1.5 times their usual pay rate, also known as timeandahalf. This is usually delivered at the same time as an employee's regular pay.

Who is eligible for overtime?

Employees who work on an hourly wage basis, are eligible to receive overtime compensation. Those who are eligible are often referred to as "nonexempt" employees, because they are not exempt from overtime eligibility.

Employees working in personal service oriented jobs, known as pinkcollar jobs, make up much of the nonexempt pool. Customer service representatives, food servers, and retail sales associates make up some of the various jobs to which the FLSA grants overtime.

Who isn't eligible for overtime?

Employees that aren't eligible for overtime typically consist of white collar jobs, such as administrative positions, executive roles, professionals, and computer professionals. In these positions, employees are supervising other employees, making high level decisions, using creative, artistic, and/or computer based skills to carry out the job.

Those employees, referred to as "exempt employees," must earn a certain amount of money per week on a salary basis in order to be classified as exempt. The exact dollar amount can change, depending on Congressional action or rule changes handed down by the USDOL, which enforces national wage and hour law.

Others who aren't eligible for overtime pay include: farmworkers, motion picture theater employees, certain commissioned employees of retail establishments, vehicle salesworkers, domestic service workers living in the employer's residence, taxi drivers, railroad and air carrier employees, seamen on American vessels, some employees of motor carriers, local delivery employees paid on an approved trip rate plan, and announcers, news editors, plus chief engineers operating from non-metropolitan broadcasting stations, according to the law.



How is overtime calculated?

As established, certain employees are entitled to a rate of at least 1.5 times their regular rate of pay for each extra hour worked in a workweek. However, the way it is calculated depends on how an employee is paid:

- (1) **Hourly rate (regular pay rate paid by the hour):** If an eligible employee works more than 40 hours a week, at least one and onehalf times the regular rate for each hour worked over 40 is due.
- (2) **Piece rate:** Regular pay rate for an employee paid on a piecework basis is achieved by dividing the total weekly earnings by the total number of hours worked in the week. For example, an employee paid on this rate works 45 hours a week and earns \$405. Their regular pay rate for the week is \$405 divided by 45, totaling \$9.00 an hour. Plus, in addition to the straight time pay, the employee is also entitled to \$4.50 (half the regular rate) for all hours worked over 40, equalling \$22.50 for the 5 overtime hours. The employee would therefore earn \$427.50.

If the parties agree to it before the work is performed, another way to compensate pieceworkers is to pay one and one half times the piece rate for each produced during the overtime hours. The piece rate must be one the one paid during 13 non overtime hours and must be enough forgo at least the minimum wage per hour.

- (3) **Salary:** To obtain the regular rate for an employee paid a salary for a specified or regular number of hours a week, divide the salary by the number of hours for which the salary is intended to compensate. Employees have the right to an additional one half times this regular rate for all hours over 40, plus the salary.



How does the FLSA define “work time” and a “work week”?

Work time: Any and all time an employee spends performing job related activities is potentially considered work time. This includes the regular “on the clock” work time and “off the clock” time spent performing job related activities that may benefit the employer.

Any and all time employees are required to be at the premises of an employer is also considered work time. This goes for regular shift time, including breaks and nonproductive time (such as a receptionist reading a book while waiting for the phone to ring). If an employer does not wish for an employee to perform the work, the employer has the right to control the work. This concept is articulated in the FLSA’s definition of “employ,” which includes the words “suffer or permit to work.” This means that if an employer allows or demands employees to work they are therefore employed and time spent is probably hours worked.

This is where record keeping becomes an important factor, as employees may or not report the time they have worked and ask for overtime. The employer may not know the work was being performed, therefore employees may not receive overtime. If an employer does not maintain records, employees are entitled to recover based on a good faith, reasonable and realistic estimate.

Work week: A normal FLSA work period comprises seven consecutive days, with the overtime threshold being 40 hours per workweek. Some jobs may be governed by different FLSA overtime thresholds. For example, a retail employer’s sales staff may operate on a Saturday to Friday work-week while the managerial staff operate on a Monday through Sunday work week. Other than a few exceptions, most businesses operate on a 40 hour work week.

Employers are not permitted to average out hours over two or more weeks. For example, averaging a 50hour work week with a 30 hour work week equalling a 40 hour week to avoid overtime requirements is prohibited.



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If I work from home can I still get overtime pay?

Yes. Time spent on work done at home or elsewhere that is not on the employer's premises must be accounted for. To be eligible for this, employers must know that you are working.

I sometimes put in a few minutes of extra work here and there. Is that compensable overtime?

It depends. If you're only putting in 5 to 10 minutes total in a week, this is considered *de minimis*, or work so small it is impractical to record the time. It is wise to keep track of any and all time worked through logs and other forms of agendas, as time can accumulate and you may be entitled to proper compensation.

What does it mean to be "misclassified"?

Misclassified employees are those incorrectly labeled or given an improper job title. An example of this is as follows: An employer gives an employee the title of assistant manager or supervisor, and classifies the employee as exempt, but the worker spends a majority of the day performing the same duties as those they are supervising. This is a typical attempt for employers to avoid paying overtime.

There is another way that employers might misclassify an employee to deny them their rights under the FLSA. They do this by misclassifying them as an independent contractor. There are five commonly considered factors in this evaluation:

- (1) Degree of control exercised by employer over employee
- (2) Worker's opportunity for loss and profit and their investment in the business
- (3) Degree of skill and independent initiative that is required to perform the work
- (4) The duration of the working relationship
- (5) The extent of which the work is indispensable and integral to the employer's business

This is common in construction work, janitorial work, cable TV installation workers, and other similar areas. Computer programmers are often misclassified, as IT employees are considered nonexempt.

Misclassified employees are typically denied access to benefits and protections in which they are entitled including minimum wage, overtime pay, unemployment insurance, family and medical leave, and a safe workplace.

Which industries have the most problems with FLSA violations?

A recent statistics report by the U.S. Department of Labor indicates that the restaurant industry by far the largest violator of the FLSA in 2015. The industry alone accrued 4,787 cases in 2015 and has remained the number one violator since 2009. The healthcare and agriculture industries are the second and third largest low wage enforcers, followed by hotels and motels, daycare, janitorial and guard services, temporary help, garment manufacturing. The financial service industry are under fire for misclassifications for certain positions.



What does the FLSA do for tipped employees?

Tipped employees are individuals who regularly receive more than \$30 a month in tips. The FLSA does establish a minimum wage for tipped employees, which legislators have set at \$2.13. While employers may consider tips as part of wages, they are required to still pay the employee \$2.13 an hour in direct wages. Although low, the rationale is that the tips made by the employee covers the rest.

The employee must be informed in advance if their employer elects to use the tip credit provision. This provision states that employers can pay below minimum wage but that both the wage and tips combined must equal the standard minimum wage. Employers must prove to the employee that he/she receives at least the minimum wage when direct wages and the tip credit claimed are combined. But if an employee's tips combined with his/her direct wages of \$2.13 an hour do not equal the minimum hourly wage, employers are forced to make up the difference. Tipped employees have the right to keep all of their tips unless they participate in a valid tip pooling or sharing arrangement.

States' minimum wage laws that differ from the FLSA can likewise differ for tipped employees. In some states, tipped employees can get the full standard minimum wage in addition to their tips. If an employee is subject to both federal and state wage laws, employees are entitled to the provisions of each law that provides the greater benefits.

What do I do if my employer hasn't paid me overtime or minimum wage, but I think I deserve it?

Under the FLSA, employees may file a private suit to recover back wages and an equal amount in liquidated damages if employers violated minimum wage and overtime regulations. In general, remedies may be recovered through administrative procedures, litigation, and/or criminal prosecution.

Administrative procedures: The Department of Labor is authorized to supervise the payment of unpaid overtime or unpaid minimum wage compensation owed to an employee. Instead of litigation, the DOL may seek back wages and liquidated damages through settlements with employers. Civil money penalties may also be assessed for child labor violations and repeated or willful violations of wage and overtime requirements.

Litigation procedures: The DOL can file a suit on behalf of employees for back wages, equal amount in liquidated damages, and civil money penalties where applicable. However, an employee also has the right to file a private suit for the above mentioned, including attorney's fees and court costs. In this case, the DOL will not seek the same back wages and liquidated damages on the employee's behalf.

Criminal prosecution: Employers willfully violating the law are subject to criminal penalties, such as fines and imprisonment. There is a two year statute of limitations on recovering back wages and liquidated damages, meaning you have two years to file a claim against the violations. A three year statute of limitations applies in cases involving willful violations. Willful violations are acts done by employer voluntarily with either indifference or intentional disregard to the FLSA's policies.



Can I be fired for suing my employer for my unpaid overtime?

No. Employees who have filed complaints are protected under the FLSA and cannot be discriminated against or discharged for reporting activities — in other words, retaliation against a complainant is illegal.

Should an employer take action against an employee for engaging in protected activity, the employee can file a suit for relief, including reinstatement for his/her job, as well as the aforementioned payment of lost wages and damages.



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We're here to answer any questions you have about overtime laws. If you believe you were denied overtime pay that you are entitled to, please call or visit:

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